ARGUMENT

OF

GEORGE S. BOUTWELL,

ONE OF THE MANAGERS ON THE PART OF THE HOUSE OF REPRESENTATIVES,

BEFORE

THE SENATE OF THE UNITED STATES,

SITTING FOR

THE TRIAL OF ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES,

IMPEACHED OF HIGH CRIMES AND MISDEMEANORS.

APRIL 22 AND 23, 1868.

WASHINGTON:
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1868.

ARGUMENT.

WEDNESDAY, APRIL 22, 1868.

Hon. GEORGE S. BOUTWELL, on behalf of the Managers, addressed the Senate, as follows:

Mr. PRESIDENT, SENATORS: The importance of this occasion is due to the unexampled circumstance that the Chief Magistrate of the principal Republic of the world is on trial upon the charge that he is guilty of high crimes and misdemeanors in office. The solemnity of this occasion is due to the circumstance that this trial is a new test to our public national virtue and also of the strength and vigor of popular government. The trial of a great criminal is not an extraordinary event, even when followed by conviction and the severest penalty known to the laws. This respondent is not to be deprived of life, liberty, or property. The object of this proceeding is not the punishment of the offender, but the safety of the State. As the daily life of the wise and just magistrate is an example for good, cheering, encouraging, and strengthening all others, so the trial and conviction of a dishonest or an unfaithful officer is a warning to all men, and especially to such as occupy places of public trust.

ISSUES.

The issues of record between the House of Representatives and Andrew Johnson, President of the United States, are technical and limited. We have met the issues, and, as we believe, maintained the cause of the House of Representatives by evidence direct, clear, and conclusive. Those issues require you to ascertain and declare whether Andrew Johnson, President of the United States, is guilty of high crimes and misdemeanors as set forth in the several articles of impeachment exhibited against him, and especially whether he has violated the laws or the Constitution of the country in the attempt which he made on the 21st of February last to remove Edwin M. Stanton from the office of Secretary for the Department of War, and to appoint Lorenzo Thomas Secretary of War *ad interim*.

These are the issues disclosed by the record. They appear in the statement to be limited in their nature and character; but your final action thereon involves and settles questions of public policy of greater magnitude than any which have been considered in the political or judicial proceedings of the country since the adoption of the Constitution.

DEFENSE.

Mr. Johnson attempts to defend his conduct in the matter of the removal of Mr. Stanton by an assertion of "the power at any and all times of removing from office all executive officers for cause to be judged of by the President alone."

This claim manifestly extends to the officers of the Army and of the Navy, of the civil and the diplomatic service. He thus assumes and demands for himself and for all his successors absolute control over the vast and yearly increasing patronage of this Government. This claim has never been before asserted, and surely it has never been sanctioned; nor is there a law or usage which furnishes any ground for justification, even the least.

Heretofore the Senate has always been consulted in regard to appointments, and during the sessions of the Senate it has always been consulted in regard to removals from office. The claim now made, if sanctioned, strips the Senate of all practical power in the premises, and leaves the patronage of office, the revenues and expenditures of the country in the hands

of the President alone. Who does not see that the power of the Senate to act upon and confirm a nomination is a barren power, as a means of protecting the public interests, if the person so confirmed may be removed from his office at once without the advice and consent of the Senate? If this claim shall be conceded the President is clothed with power to remove every person who refuses to become his instrument.

An evil-minded President may remove all loyal and patriotic officers from the Army, the Navy, the civil and the diplomatic service, and nominate only his adherents and friends. None but his friends can remain in office; none but his friends can be appointed to office. What security remains for the fidelity of the Army and the Navy? What security for the collection of the public revenues? What accountability remains in any branch of the public service? Every public officer is henceforth a mere dependent upon the Executive. Heretofore the Senate could say to the President, "You shall not remove a faithful, honest public officer." This power the Senate has possessed and exercised for nearly eighty years, under and by virtue of express authority granted in the Constitution. Is this authority to be surrendered? Is this power of the Senate, this prerogative we may almost call it, to be abandoned? Has the country, has the Senate, in the exercise of its legislative, executive, or judicial functions, fully considered these broader and graver issues touching and affecting vitally our institutions and system of government?

The House of Representatives has brought Andrew Johnson, President of the United States, to the bar of this august tribunal, and has here charged him with high crimes and misdemeanors in office. He meets the charge by denying and assailing the ancient, undoubted, constitutional powers of the Senate. This is the grave, national, historical, constitutional issue. When you decide the issues of record, which appear narrow and technical, you decide these greater issues also.

The Managers on the part of the House of Representatives, as time and their abilities may permit, intend to deal with the criminal and with these his crimes, and also to examine the constitutional powers of the President and of the Senate. I shall first invite your attention, Senators, to the last-mentioned topics.

It is necessary, in this discussion, to consider the character of the Government, and especially the distribution of powers and the limitations placed by the Constitution upon the executive, judicial, and legislative departments.

TENTH AMENDMENT.

The tenth amendment to the Constitution provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This provision is not to be so construed as to defeat the objects for which the Constitution itself was established; and it follows, necessarily, that the three departments of the Government possess sufficient power collectively to accomplish those objects.

It will be seen from an examination of the grants of power made to the several departments of the Government that there is a difference in the phraseology employed, and that the legislative branch alone is intrusted with discretionary authority. The first section of the first article provides that "all legislative powers *herein granted* shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The first section of the second article provides that "executive power shall be vested in a President of the United States of America;" and the first section of the third article provides that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." The words "herein granted," as used in the first section of the first article of the Constitution, are of themselves words of limitation upon the legislative powers of Congress, confining those powers within the authority expressed in the Constitution. The absence of those words in the provisions relating to the executive and judicial departments does not, as might at first be supposed, justify the inference that unlimited authority is conferred upon those departments. An examination of the Constitution shows that the executive and judicial departments have no inherent vigor by which, under the Constitution, they are enabled to perform the functions delegated to them, while the legislative department, in noticeable contrast, is clothed with authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, *and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof.*"

By virtue of this provision the Constitution devolves upon Congress the duty of providing by legislation for the full execution not only of the powers vested in Congress, but also of providing by legislation for the execution of those powers which, by the Constitution, are vested in the executive and judicial departments. The legislative department has original power derived from the Constitution by which it can set and keep itself in motion as a branch of the Government, while the executive and judicial departments have no self-executing constitutional capacity, but are constantly dependent upon the legislative department. Nor does it follow, as might upon slight attention be assumed, that the executive power given to the President is an unlimited power, or that it answers or corresponds to the powers which have been or may be exercised by the executive of any other Government. The President of the United States is not endowed by the Constitution with the executive power which was pos-

sessed by Henry VIII or Queen Elizabeth, or by any ruler in any other country or time, but only with the power expressly granted to him by the Constitution and with such other powers as have been conferred upon him by Congress for the purpose of carrying into effect the powers which are granted to the President by the Constitution. Hence it may be asserted that whenever the President attempts to exercise any power he must, if his right be questioned, find a specific authority in the Constitution or laws. By the Constitution he is Commander-in-Chief of the Army and Navy; but it is for Congress to decide, in the first place, whether there shall be an Army or Navy, and the President must command the Army or Navy as it is created by Congress, and subject, as is every other officer of the Army and Navy, to such rules and regulations as Congress may from time to time establish.

The President "may require the opinion in writing of the principal officer in each of the Executive Departments upon any subject relating to the duties of their respective offices," but the executive offices themselves are created by Congress, and the duties of each officer are prescribed by law. In fine, the power to set the Government in motion and to keep it in motion is lodged exclusively in Congress under the provisions of the Constitution.

By our system of Government the sovereignty is in the people of the United States, and that sovereignty is fully expressed in the preamble to the Constitution. By the Constitution the people have vested discretionary power—limited, it is true—in the Congress of the United States, while they have denied to the executive and judicial departments all discretionary or implied power whatever.

The nature and extent of the powers conferred by the Constitution upon Congress have been clearly and fully set forth by the Supreme Court. (McCulloch *vs.* The State of Maryland, 4 Wheaton, pp. 409 and 420.) The court, in speaking of the power of Congress, say:

> "The Government, which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means."

Again, they say:

> "We admit, as all must admit, that the powers of the Government are limited, and that these limits are not to be transcended; but we think the sound construction of the Constitution must allow to *the national Legislature* that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the thing be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to the end, which are not prohibited, and consistent with the letter and spirit of the Constitution, are constitutional."

It is also worthy of remark, in this connection, that the article which confers legislative powers upon the Congress of the United States declares that *all* legislative powers herein granted—that is, granted in the Constitution—shall be vested in the Congress of the United States; while in the section relating to the powers of the President it is declared that *the* executive power shall be vested in a President of the United States of America. The inference from this distinction is in harmony with what has been previously stated. "The executive power" spoken of is that which is conferred upon the President by the Constitution, and it is limited by the terms of the Constitution, and must be exercised in the manner prescribed by the Constitution. The words used are to be interpreted according to their ordinary meaning.

It is also worthy of remark that the Constitution, in terms, denies to Congress various legislative powers specified. It denies also to the United States various powers, and various powers enumerated are likewise denied to the States. There is but one denial of power to the President, and that is a limitation of an express power granted. The single instance of a denial of power to the President is in that provision of the Constitution wherein he is authorized "to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." As the powers granted to the President are specified, and as he takes nothing by implication or inference, there was no occasion to recite or enumerate powers not delegated to him. As the Constitution clothes Congress with powers of legislation which are ample for all the necessities of national life, wherein there is opportunity for the exercise of a wide discretion, it was necessary to specify such powers as are prohibited to Congress. The powers of Congress are ascertained by considering as well what is prohibited as what is granted, while the powers of the Executive are to be ascertained clearly and fully by what is granted. Where there is nothing left to inference, implication, or discretion, there is no necessity for clauses or provisions of inhibition. In the single case of the grant of the full power of pardon to the President, a power unlimited in its very nature, the denial of the power to pardon in case of impeachment became necessary. This example fully illustrates and establishes the position to which I now ask your assent. If this view be correct it follows necessarily, as has been before stated, that the President, acting under the Constitution, can exercise those powers only which are specifically conferred upon him, and can take nothing by construction, by implication, or by what is sometimes termed the necessity of the case.

But in every Government there should be in its constitution capacity to adapt the administration of affairs to the changing conditions of national life. In the Government of the United States this capacity is found in Congress, in virtue of the provision already quoted, by which Congress is authorized "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers,

(*i. e.*, the powers given to Congress,) and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

It is made the duty of the President, "from time to time, to give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."

Provision is also made in the Constitution for his coöperation in the enactment of laws. Thus it is in his power to lay before Congress the reasons which, in his opinion, may at any time exist for legislative action in aid of the executive powers conferred by the Constitution upon the President; and under the ample legislative powers secured to Congress by the provisions already quoted there is no reason in the nature of the Government why the constitutional and lawful powers of the Executive may not be made adequate to every emergency of the country. In fine, the President may be said to be governed by the principles which govern the judge in a court of law. He must take the law and administer it as he finds it without any inquiry on his part as to the wisdom of the legislation. So the President, with reference to the measure of his own powers, must take the Constitution and the laws of the country as they are, and be governed strictly by them. If, in any particular, by implication or construction, he assumes and exercises authority not granted to him by the Constitution or the laws he violates his oath of office, by which, under the Constitution, it is made his duty "to take care that the laws be faithfully executed," which implies necessarily that he can go into no inquiry as to whether the laws are expedient or otherwise; nor is it within his province, in the execution of the law, to consider whether it is constitutional. In his communications to Congress he may consider and discuss the constitutionality of existing or proposed legislation, and when a bill is passed by the two Houses and submitted to him for approval he may, if in his opinion the same is unconstitutional, return it to the House in which it originated with his reasons. In the performance of these duties he exhausts his constitutional power in the work of legislation. If, notwithstanding his objections, Congress, by a two-thirds majority in each House, shall pass the bill, it is then the duty of the President to obey and execute it, as it is his duty to obey and execute all laws which he or his predecessors may have approved.

If a law be in fact unconstitutional it may be repealed by Congress, or it may, possibly, when a case duly arises, be annulled in its unconstitutional features by the Supreme Court of the United States. The repeal of the law is a legislative act; the declaration by the court that it is unconstitutional is a judicial act; but the power to repeal or to annul or to set aside a law of the United States is in no aspect of the case an executive power. It is made the duty of the Executive to take care that the laws be faithfully executed—an injunction wholly inconsistent with the theory that it is in the power of the Executive to repeal or annul or dispense with the laws of the land. To the President in the performance of his executive duties all laws are alike. He can enter into no inquiry as to their expediency or constitutionality. All laws are presumed to be constitutional, and, whether in fact constitutional or not, it is the duty of the Executive so to regard them while they have the form of law. When a statute is repealed for its unconstitutionality, or for any other reason, it ceases to be law in form and in fact. When a statute is annulled in whole or in part by the opinion of a competent judicial tribunal, from that moment it ceases to be law. But the respondent and the counsel for the respondent will seek in vain for any authority or color of authority in the Constitution or the laws of the country by which the President is clothed with power to make any distinction upon his own judgment, or upon the judgment of any friends or advisers, whether private or official persons, between the several statutes of the country, each and every one of which he is, by the Constitution and by his oath of office, required faithfully to execute. Hence it follows that the crime of the President is not, either in fact or as set forth in the articles of impeachment, that he has violated a constitutional law, but his crime is that he has violated a law, and in his defense no inquiry can be made whether the law is constitutional; for inasmuch as he had no constitutional power to inquire for himself whether the law was constitutional or not, so it is no excuse for him that he did unlawfully so inquire and came to the conclusion that the law was unconstitutional.

It follows, from the authorities already quoted and the positions founded thereon, that there can be no inquiry here and now by this tribunal whether the act in question—the act entitled "An act regulating the tenure of certain civil offices"—is in fact constitutional or not. It was and is the law of the land. It was enacted by a strict adherence to constitutional forms. It was and is binding upon all the officers and departments of the Government. The Senate, for the purpose of deciding whether the respondent is innocent or guilty, can enter into no inquiry as to the constitutionality of the act, which it was the President's duty to execute, and which, upon his own answer, and by repeated official confessions and admissions, he intentionally, willfully, deliberately set aside and violated.

If the President, in the discharge of his duty "to take care that the laws be faithfully executed," may inquire whether the laws are constitutional, and execute those only which he believes to be so, then, for the purposes of government, his will or opinion is substituted for the action of the law-making power, and the Government is no longer a Government of laws, but the Government of one man. This is also

true, if, when arraigned, he may justify by showing that he has acted upon advice that the law was unconstitutional. Further, if the Senate sitting for the trial of the President may inquire and decide whether the law is in fact constitutional, and convict the President if he has violated an act believed to be constitutional, and acquit him if the Senate think the law unconstitutional, then the President is in fact tried for his judgment, to be acquitted if in the opinion of the Senate it was a correct judgment, and convicted if in the opinion of the Senate his judgment was erroneous. This doctrine offends every principle of justice. His offense is that he intentionally violated a law. Knowing its terms and requirements, he disregarded them.

With deference I maintain still further that it is not the right of any Senator in this trial to be governed by any opinion he may entertain of the constitutionality or expediency of the law in question. For the purposes of this trial the statute which the President, upon his own confession, has repeatedly violated is the law of the land. His crime is that he violated the law. It has not been repealed by Congress; it has not been annulled by the Supreme Court; it stands upon the statute-book as the law; and for the purposes of this trial it is to be treated by every Senator as a constitutional law. Otherwise it follows that the President of the United States, supported by a minority exceeding by one a third of this Senate, may set aside, disregard, and violate all the laws of the land. It is nothing to this respondent, it is nothing to this Senate, sitting here as a tribunal to try and judge this respondent, that the Senators participated in the passage of the act, or that the respondent, in the exercise of a constitutional power, returned the bill to the Senate with his objections thereto. The act itself is as binding, is as constitutional, is as sacred in the eye of the Constitution as the acts that were passed at the first session of the First Congress. If the President may refuse to execute a law because in his opinion it is unconstitutional, or for the reason that, in the judgment of his friends and advisers, it is unconstitutional, then he and his successors in office may refuse to execute any statute the constitutionality of which has not been affirmatively settled by the Supreme Court of the United States. If a minority, exceeding one third of this Senate by one, may relieve the President from all responsibility for this violation of his oath of office, because they concur with him in the opinion that this legislation is either unconstitutional or of doubtful constitutionality, then there is no security for the execution of the laws. The constitutional injunction upon the President is to take care that the laws be faithfully executed; and upon him no power whatsoever is conferred by the Constitution to inquire whether the law that he is charged to execute is or is not constitutional. The constitutional injunction upon you, in your present capacity, is to hold the respondent faithfully to the execution of the constitutional trusts and duties imposed upon him. If he has willfully disregarded the obligation resting upon him, to take care that the laws be faithfully executed, then the constitutional duty imposed upon you is to convict him of the crime of having willfully disregarded the laws of the land and violated his oath of office.

I indulge, Senators, in great plainness of speech, and pursue a line of remark which, were the subject less important or the duty resting upon us less solemn, I should studiously avoid. But I speak with every feeling and sentiment of respect for this body and this place of which my nature is capable. In my boyhood, from the gallery of the old Chamber of the Senate, I looked, not with admiration merely, but with something of awe upon the men of that generation who were then in the seats which you now fill. Time and experience may have modified and chastened those impressions, but they are not, they cannot be obliterated. They will remain with me while life remains. But, with my convictions of my own duty, with my convictions of your duty, with my convictions of the danger, the imminent peril, to our country if you should not render a judgment of guilty against this respondent, I have no alternative but to speak with all the plainness and directness which the most earnest convictions of the truth of what I utter can inspire.

MOTIVE.

Nor can the President prove or plead the motive by which he professes to have been governed in his violation of the laws of the country. Where a positive specific duty is imposed upon a public officer his motives cannot be good if he willfully neglects or refuses to discharge his duty in the manner in which it is imposed upon him. In other words, it is not possible for a public officer, and particularly for the President of the United States, who is under a special constitutional injunction to discharge his duty faithfully, to have any motive except a bad motive if he willfully violates his duty. A judge, to be sure, in the exercise of a discretionary power, as in imposing a sentence upon a criminal, where the penalty is not specific, may err in the exercise of that discretion and plead properly his good motives in the discharge of his duty; that is, he may say that he intended, under the law, to impose a proper penalty; and inasmuch as that was his intention, though all other men may think that the penalty was either insufficient or excessive, he is fully justified by his motives.

So the President, having vested in him discretionary power in regard to granting pardons, might, if arraigned for the improper exercise of that power in a particular case, plead and prove his good motives, although his action might be universally condemned as improper or unwise in that particular case. But the circumstances of this respondent are wholly

different. The law which, as he admits, he has intentionally and deliberately violated, was mandatory upon him, and left in his hands no discretion as to whether he would, in a given case, execute it or not.

A public officer can neither plead nor prove good motives to refute or control his own admission that he has intentionally violated a public law.

Take the case of the President; his oath is:

"I do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."

One of the provisions of that Constitution is that the President shall "take care that the laws be faithfully executed." In this injunction there are no qualifying words. It is made his duty to take care that the *laws. the laws*, be faithfully executed. A law is well defined to be "a rule laid, set, or established by the law-making power of the country." It is of such rules that the Constitution speaks in this injunction to the President; and in obedience to that injunction, and with reference to his duty under his oath to take care that the laws be faithfully executed, he can enter into no inquiry as to whether those laws are expedient or constitutional, or otherwise. And inasmuch as it is not possible for him, under the Constitution, to enter lawfully into any such inquiry, it is alike impossible for him to plead or to prove that, having entered into such inquiry, which was in itself unlawful, he was governed by a good motive in the result which he reached and in his action thereupon. Having no right to inquire whether the laws were expedient or constitutional, or otherwise, if he did so inquire, and if upon such inquiry he came to the conclusion that, for any reason, he would not execute the law according to the terms of the law, then he willfully violated his oath of office and the Constitution of the United States. The necessary, the inevitable presumption in law is, that he acted under the influence of bad motives in so doing, and no evidence can be introduced controlling or coloring in any degree this necessary presumption of the law.

Having, therefore, no right to entertain any motive contrary to his constitutional obligation to execute the laws, he cannot plead his motive. Inasmuch as he can neither plead nor prove his motive, the presumption of the law must remain that in violating his oath of office and the Constitution of the United States he was influenced by a bad motive. The magistrate who willfully breaks the laws, in violation of his oath to execute them, insults and outrages the common sense and the common nature of his countrymen when he asserts that their laws are so bad that they deserve to be broken. This is the language of a defiant usurper, or of a man who has surrendered himself to the counsel and control of the enemies of his country.

If a President, believing the law to be unconstitutional, may refuse to execute it, then your laws for the reconstruction of the southern States, your laws for the collection of the internal revenue, your laws for the collection of custom-house duties, are dependent for their execution upon the individual opinion of the President as to whether they are constitutional or not; and if these laws are so dependent, all other laws are equally dependent upon the opinion of the Executive. Hence it follows that, whatever the legislation of Congress may be, the laws of the country are to be executed only so far as the President believes them to be constitutional. This respondent avers that his sole object in violating the tenure-of-office act was to obtain the opinion of the Supreme Court upon the question of the constitutionality of that law. In other words, he deliberately violated the law, which was in him a crime, for the purpose of ascertaining judicially whether the law could be violated with impunity or not. At that very time he had resting upon him the obligations of a citizen to obey the laws, and the higher and more solemn obligation, imposed by the Constitution upon the first magistrate of the country, to execute the laws. If a private citizen violates a law, he does so at his peril. If the President or Vice President, or any other civil officer, violates a law, his peril is that he may be impeached by the House of Representatives and convicted by the Senate. This is precisely the responsibility which the respondent has incurred; and it would be no relief to him for his willful violation of the law, in the circumstances in which he is now placed, if the court itself had pronounced the same to be unconstitutional.

But it is not easy to comprehend the audacity, the criminal character of a proceeding by which the President of the United States attempts systematically to undermine the Government itself by drawing purposely into controversy, in the courts and elsewhere, the validity of the laws enacted by the constituted authorities of the country, who, as much as himself, are individually under an obligation to obey the Constitution in all their public acts. With the same reason and for the same object he might violate the reconstruction laws, tax laws, tariff acts, or the neutrality laws of the country; and thus, in a single day of his official life, raise questions which could not be disposed of for years in the courts of the country. The evidence discloses the fact that he has taken no step for the purpose of testing the constitutionality of the law. He suspended numerous officers under, or, if not under, at least, as he himself admits, in conformity with the tenure-of-office law, showing that it was not his sole object to test its constitutionality. He has had opportunity to make application through the Attorney General for a writ of *quo warranto*, which might have tested the validity of the law in the courts. This writ is the writ of the Government, and it can never be granted upon the application of a private person. The

President has never taken one step to test the law in the courts. Since his attempted removal of Mr. Stanton on the 21st of February last he might have instituted proceedings by a writ of *quo warranto*, and by this time have obtained, probably, a judicial opinion covering all the points of the case. But he shrinks from the test he says he sought. Thus is the pretext of the President fully exposed. The evidence shows that he never designed to test the law in the courts. His object was to seize the offices of the Government for purposes of corruption, and by their influence to enable him to reconstruct the Union in the interest of the rebellious States. In short, he resorted to this usurpation as an efficient and necessary means of usurping all power and of restoring the Government to rebel hands.

No criminal was ever arraigned who offered a more unsatisfactory excuse for his crimes. The President had no right to do what he says he designed to do, and the evidence shows that he never has attempted to do what he now assigns as his purpose when he trampled the laws of his country under his feet.

These considerations have prepared the way in some degree, I trust, for an examination of the provisions of the Constitution relating to the appointment of embassadors and other public ministers and consuls, judges of the Supreme Court, and other officers of the United States, for whose appointment provision is made in the second section of the second article of the Constitution. It is there declared that the President "shall nominate," and, by and with the consent of the Senate, shall "appoint embassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law." The phrase, "are not herein otherwise provided for," is understood to refer to Senators, who, under the Constitution, in case of a vacancy, may be appointed by the Governors of the several States, and to those appointments which might be confided by law to the courts or to the heads of Departments. It is essential to notice the fact that neither in this provision of the Constitution nor in any other is power given to the President to remove any officer. The only power of removal specified in the Constitution is that of the Senate, by its verdict of guilty, to remove the President, Vice President, or other civil officer who may be impeached by the House of Representatives and presented to the Senate for trial.

Upon the premises already laid down it is clear that the power of removal from office is not vested in the President alone, but only in the President by and with the advice and consent of the Senate. Applying the provision of the Constitution already cited to the condition of affairs existing at the time the Government was organized, we find that the course pursued by the First Congress and by the first President was the inevitable result of the operation of this provision of the organic law. In the first instance, several executive Departments were established by acts of Congress, and in those Departments offices of various grades were created. The conduct of foreign affairs required the appointment of embassadors, ministers, and consuls, and consequently those necessary offices were established by law. The President, in conformity with this provision of the Constitution, made nominations to the Senate of persons to fill the various offices so established. These nominations were considered and acted upon by the Senate, and when confirmed by the Senate the persons so nominated were appointed and authorized by commissions under the hand of the President to enter upon the discharge of their respective duties. In the nature of the case it was not possible for the President, during a session of the Senate, to assign to duty in any of the offices so created any person who had not been by him nominated to the Senate and by that body confirmed, and there is no evidence that any such attempt was made. The persons thus nominated and confirmed were in their offices under the Constitution, and by virtue of the concurrent action of the President and the Senate. There is not to be found in the Constitution any provision contemplating the removal of such persons from office. But inasmuch as it is essential to the proper administration of affairs that there should be a power of removal, and inasmuch as the power of nomination and confirmation vested in the President and in the Senate is a continuing power, not exhausted either by a single exercise or by a repeated exercise in reference to a particular office, it follows legitimately and properly that the President might at any time nominate to the Senate a person to fill a particular office, and the Senate, in the exercise of its constitutional power, could confirm that nomination, that the person so nominated and confirmed would have a right to take and enjoy the office to which he had been so appointed, and thus to dispossess the previous incumbent. It is apparent that no removal can be made unless the President takes the initiative, and hence the expression "removal by the President."

As, by a common and universally recognized principle of construction, the most recent statute is obligatory and controlling wherever it contravenes a previous statute, so a recent commission, issued under an appointment made by and with the advice and consent of the Senate, supersedes a previous appointment although made in the same manner. It is thus apparent that there is, under and by virtue of the clause of the Constitution quoted, no power of removal vested either in the President or in the Senate, or in both of them together as an independent power; but it is rather a consequence of the power of appointment. And as the power of appointment is not vested in

the President, but only the right to make a nomination, which becomes an appointment only when the nomination has been confirmed by the Senate, the power of removing a public officer cannot be deemed an executive power solely within the meaning of this provision of the Constitution.

This view of the subject is in harmony with the opinion expressed in the seventy-sixth number of the Federalist. After stating with great force the objections which exist to the "exercise of the power of appointing to office by an assembly of men," the writer proceeds to say:

"The truth of the principles here advanced seems to have been felt by the most intelligent of those who have found fault with the provision made in this respect by the convention. They contend that the President ought solely to have been authorized to make the appointments under the Federal Government. But it is easy to show that every advantage to be expected from such an arrangement would, in substance be derived from the power of *nomination*, which is proposed to be conferred upon him, while several disadvantages which might attend the absolute power of appointment in the hands of that officer would be avoided. In the act of nominating his judgment alone would be exercised, and as it would be his sole duty to point out the man who with the approbation of the Senate should fill an office, his responsibility would be as complete as if he were to make the final appointment. There can, in this view, be no difference between nominating and appointing. The same motives which would influence a proper discharge of his duty in one case would exist in the other; and as no man could be appointed but upon his previous nomination, every man who might be appointed would be in fact his choice.

"But his nomination may be overruled. This it certainly may, yet it can only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though, perhaps, not in the highest degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted by the preference they might feel to another to reject the one proposed, because they could not assure themselves that the person they might wish would be brought forward by a second, or by any subsequent nomination. They could not even be certain that a future nomination would present a candidate in any degree more acceptable to them. And as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the Chief Magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

"To what purpose, then, require the coöperation of the Senate? I answer that the necessity of their concurrence would have a powerful, though in general, a silent operation. It would be an excellent check upon the spirit of favoritism in the President, and would tend greatly to preventing the appointment of unfit characters, from State prejudice, from family connection, from personal attachment, or from a view to popularity. And, in addition to this, it would be an efficacious source of stability in the Administration.

"It will readily be comprehended that a man who had himself the sole disposition of office would be governed much more by his private inclinations and interests than when he was bound to submit the propriety of his choice to the dictation and determination of a different and independent body, and that body an entire branch of the Legislature. The possibility of rejection would be a strong motive to care in proposing. The danger of his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to one and to the other. He would be both ashamed and afraid to bring forward for the most distinguished or lucrative stations candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, and possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure."

When the President has made a nomination for a particular office, and that nomination has been confirmed by the Senate, the constitutional power of the President during the session of the Senate is exhausted with reference to that officer. All that he can do under the Constitution is in the same manner to nominate a successor, who may be either confirmed or rejected by the Senate. Considering the powers of the President exclusively with reference to the removal and appointment of civil officers during the session of the Senate it is clear that he can only act in concurrence with the Senate. An office being filled, he can only nominate a successor, who, when confirmed by the Senate, is, by operation of the Constitution, appointed to the office, and it is the duty of the President to issue his commission accordingly. This commission operates as a *supersedeas*, and the previous occupant is thereby removed.

No legislation has attempted to enlarge or diminish the constitutional powers of the President, and no legislation can enlarge or diminish his constitutional powers in this respect, as I shall hereafter show. It is here and now, in the presence of this provision of the Constitution concerning the true meaning of which there neither is nor has ever been any serious doubt in the mind of any lawyer or statesman, that we strip the defense of the President of all the questions and technicalities which the intellects of men, sharpened but not enlarged by the practice of the law, have wrung from the legislation of the country covering three fourths of a century.

On the 21st day of February last Mr. Stanton was *de facto* and *de jure* Secretary for the Department of War. The President's letter to Mr. Stanton of that date is evidence of this fact:

EXECUTIVE MANSION,
WASHINGTON, D. C., *February* 21, 1868.

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon receipt of this communication.

You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the Army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

Respectfully, yours, ANDREW JOHNSON.

Hon. EDWIN M. STANTON, *Washington, D. C.*

This letter is an admission, not only that Mr. Stanton was Secretary of War on the 21st of February, 1868, but also that the suspension of that officer of the 12th of August, A. D. 1867, whether made under the tenure-of-office

act or not, was abrogated by the action of the Senate of the 13th of January, 1868, and that then Mr. Stanton thereby was restored lawfully to the office of Secretary for the Department of War.

On the 21st day of February the Senate was in session. There was then but one constitutional way for the removal of Mr. Stanton; a nomination by the President to the Senate of a successor, and his confirmation by that body. The President attempted to remove Mr. Stanton in a way not known to the Constitution, and in violation thereof, by issuing the said order for his removal. In the first of the articles it is set forth that this order was issued "in violation of the Constitution and of the laws of the United States," and the President is consequently guilty under this article; we have proved a violation either of the Constitution or the laws. If we show that he has violated the Constitution of the United States, we show also that he has violated his oath of office, which pledged him to support the Constitution. Thus is the guilt of the President, under the Constitution and upon admitted facts, established beyond a reasonable doubt. This view is sufficient to justify and require at your hands a verdict of guilty under the first article, and this without any reference to the legislation of the country, and without reference to the constitutionality of the tenure-of-office act or to the question whether the Secretary of War is included within its provisions or not. But I intend in the course of my argument to deal with all these questions of law, and to apply the law as it shall appear to the facts proved or admitted. To be sure, in my judgment, the case presented by the House of Representatives in the name of all the people of the United States might safely be rested here; but the cause of justice, the cause of the country, requires us to expose and demonstrate the guilt of the President in all the particulars set forth in the articles of impeachment. We have no alternative but to proceed. In this connection I refer to a view presented by the counsel for the President in his opening argument. He insists or suggests that inasmuch as the letter to Stanton of the 21st of February did not, in fact, accomplish a removal of the Secretary, that therefore no offense was committed. The technicalities of the law have fallen into disrepute among the people, and sometimes even in the courts. The technicalities proper of the law are the rules developed by human experience, and justly denominated, as is the law itself, the perfection of human reason. These rules, wise though subtle, aid in the administration of justice in all tribunals where the laws are judicially administered. But it often happens that attorneys seek to confuse the minds of men and thwart the administration of justice by the suggestion of nice distinctions which have no foundation in reason and find no support in general principles of right.

The President cannot assume to exercise a power as a power belonging to the office he holds, there being no warrant in law for such exercise, and then plead that he is not guilty because the act undertaken was not fully accomplished. The President is as guilty in contemplation of law as he would have been if Mr. Stanton had submitted to his demand and retired from the office of Secretary for the Department of War. Nothing more possible remained for the President except a resort to force, and what he did and what he contemplated doing to obtain possession of the office by force will be considered hereafter.

If these views are correct, the President is wholly without power, under and by virtue of the Constitution, to suspend a public officer. And most assuredly nothing is found in the Constitution to sustain the arrogant claim which he now makes, that he may during a session of the Senate suspend a public officer indefinitely and make an appointment to the vacancy thus created without asking the advice and consent of the Senate either upon the suspension or the appointment.

I pass now to the consideration of the third clause of the second section of the second article of the Constitution:

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

The phrase, "may happen," construed according to the proper and well-understood meaning of the words when the Constitution was framed, referred to those vacancies which might occur independently of the will of the Government—vacancies arising from death, from resignation, from circumstances not produced by the act of the appointing power. The words "happen" and "happened" are of frequent use in the Bible, "that well of pure English undefiled," and always in the sense of accident, fortuity, chance, without previous expectation, as to befall, to light, to fall, or to come unexpectedly. This clause of the Constitution contains a grant of power to the President, and under and by virtue of it he may take and exercise the power granted, but nothing by construction or by implication. He then, by virtue of his office, may, during the recess of the Senate, grant commissions which shall expire at the end of the next session, and thus fill up any vacancies that may happen; that is, that may come by chance, by accident, without any agency on his part.

If, then, it be necessary and proper, as undoubtedly it is necessary and proper, that provision should be made for the suspension or temporary removal of officers who, in the recess of the Senate, have proved to be incapable or dishonest, or who in the judgment of the President are disqualified for the further discharge of the duties of their offices, it is clearly a legislative right and duty, under the clause of the Constitution which authorizes Congress

"to make all laws which shall be necessary and proper to carry into execution the foregoing powers, and all other powers vested in the Government of the United States, or in any department or officer thereof," to provide for the contingency. It is no answer to this view of the case to say that until the 2d of March, 1867, Congress neglected to legislate upon this subject, and that during the long period of such neglect, by the advice of Attorneys General, the practice was introduced and continued, by which the President, during the recess of the Senate, removed from office persons who had been nominated by the President and confirmed by the Senate. This practice having originated in the neglect of Congress to legislate upon a subject clearly within its jurisdiction, and only tolerated by Congress, has, at most, the force of a practice or usage which can at any time be annulled or controlled by statute.

This view is also sustained by the reasoning of Hamilton, in the sixty-seventh number of the Federalist, in which he says:

"The last of these two clauses, it is equally clear, cannot be understood to comprehend the power of filling vacancies in the Senate, for the following reasons: *First*, the relation in which that clause stands to the other, which declares the general mode of appointing officers of the United States, denotes it to be nothing more than a supplement to the other, for the purpose of establishing an auxiliary method of appointment in cases to which the general method was inadequate. The ordinary power of appointment is confided to the President and Senate *jointly*, and can therefore only be exercised during the session of the Senate; but as it would have been improper to oblige this body to be continually in session for the appointment of officers, and as vacancies might happen *in their recess*, which it might be necessary for the public service to fill without delay, the succeeding clause is evidently intended to authorize the President, *singly*, to make temporary appointments 'during the recess of the Senate, by granting commissions which should expire at the end of their next session.'"

The arguments which I have thus offered, and the authorities quoted, show that the President had not the power during the session of the Senate to remove either the Secretary of War or any civil officer from office by virtue of the Constitution. The power of removal during the recess of the Senate was recognized by the act of 1789, and tolerated by the country upon the opinions of Attorneys General till 1867. The President claims, however, and as an incident of the power of removal, the power to suspend from office indefinitely any officer of the Government; but inasmuch as his claim to the power of removal is not supported by the Constitution, he cannot sustain any other claim as an incident of that power. But if the power to remove were admitted, it would by no means follow that the President has the power to suspend indefinitely. The power to suspend indefinitely is a different power from that of removal, and it is in no proper sense necessarily an incident. It might be very well conceived that if the framers of the Constitution had thought fit to confer upon the President the power to remove a public officer absolutely, his removal to be followed by the nomination of a successor to the Senate, they might yet have denied to the President the power to suspend public officers indefinitely and to supply their places by his appointees without the advice and consent of the Senate. But, inasmuch as the power to suspend indefinitely is not a power claimed as a specific grant under the Constitution, and as the claim by the President of the power of removal during a session of the Senate is not sustained by the text of the Constitution or by any good authority under it, it is not important to consider whether, if the power of removal were admitted to exist, the power to suspend indefinitely could be considered as an incident. It is sufficient to say that neither power, in the sense claimed by the President, exists under the Constitution or by any provision of law.

I respectfully submit, Senators, that there can be no reasonable doubt of the soundness of the view I have presented, both of the language and meaning of the Constitution in regard to appointments to office. But. if there were any doubt, it is competent and proper to consider the effects of the claim, if recognized, as set up by the President. And in a matter of doubt as to the construction of the Constitution it would be conclusive of its true interpretation that the claim asserted by the President is fraught with evils of the gravest character. He claims the right, as well when the Senate is in session as when it is not in session, to remove absolutely, or to suspend for an indefinite period of time, according to his own discretion, every officer of the Army, of the Navy, and of the civil service, and to supply their places with creatures and partisans of his own. To be sure, he has not asserted, in direct form, his right to remove and suspend indefinitely officers of the Army and Navy; but when you consider that the Constitution makes no distinction in the tenure of office between military, naval, and civil officers; that all are nominated originally by the President and receive their appointments upon the confirmation of the Senate, and hold their offices under the Constitution by no other title than that which secures to a Cabinet officer or to a revenue collector the office to which he has been appointed, there can be no misunderstanding as to the nature, extent, and dangerous character of the claim which the President makes. The statement of this arrogant and dangerous assumption is a sufficient answer to any doubt which might exist in the mind of any patriot as to the true intent and meaning of the Constitution. It cannot be conceived that the men who framed that instrument, who were devoted to liberty, who had themselves suffered by the exercise of illegal and irresponsible power, would have vested in the President of the United States an authority, to be exercised without the restraint or control of any other branch or department of the Government, which would enable him to corrupt the civil,

military, and naval officers of the country by rendering them absolutely dependent for their positions and emoluments upon his will.

At the present time there are forty-one thousand officers, whose aggregate emoluments exceed $21,000,000 per annum. To all these the President's claim applies. These facts express the practical magnitude of the subject. Moreover, this claim was never asserted by any President or by any public man from the beginning of the Government until the present time. It is in violation also of the act of July 13, 1866, which denies to the Executive the power to remove officers of the Army and the Navy, except upon sentence of a court-martial. The history of the career of Andrew Johnson shows that he has been driven to the assertion of this claim by circumstances and events connected with his criminal design to break down the power of Congress, to subvert the institutions of the country, and thereby to restore the Union in the interest of those who participated in the rebellion. Having entered upon this career of crime, he soon found it essential to the accomplishment of his purposes to secure the support of the immense retinue of public officers of every grade and description in the country. This he could not do without making them entirely dependent upon his will; and in order that they might realize their dependence, and thus be made subservient to his purposes, he determined to assert an authority over them unauthorized by the Constitution, and therefore not attempted by any Chief Magistrate. His conversation with Mr. Wood in the autumn of 1866 fully discloses this purpose.

Previous to the passage of the tenure-of-office act he had removed hundreds of faithful and patriotic public officers, to the great detriment of the public service, and followed by an immense loss of the public revenues. At the time of the passage of the act he was so far involved in his mad schemes—schemes of ambition and revenge—that it was, in his view, impossible for him to retrace his steps. He consequently determined, by various artifices and plans, to undermine that law and secure to himself, in defiance of the will of Congress and of the country, entire control of the officers in the civil service and in the Army and the Navy. He thus became gradually involved in an unlawful undertaking from which he could not retreat. In the presence of the proceedings against him by the House of Representatives he had no alternative but to assert that under the Constitution power was vested in the President exclusively, without the advice and consent of the Senate, to remove from office every person in the service of the country. This policy, as yet acted upon in part, and developed chiefly in the civil service, has already produced evils which threaten the overthrow of the Government. When he removed faithful public officers, and appointed others whose only claim to consideration was their unreasoning devotion to his interest and unhesitating obedience to his will, they compensated themselves for this devotion and this obedience by frauds upon the revenues and by crimes against the laws of the land. Hence it has happened that in the internal revenue service alone—chiefly through the corruption of men whom he has thus appointed—the losses have amounted to not less than twenty-five, and probably to more than fifty million dollars during the last two years.

In the presence of these evils, which were then only partially realized, the Congress of the United States passed the tenure-of-office act as a barrier to their further progress. This act thus far has proved ineffectual as a complete remedy; and now the President, by his answer to the articles of impeachment, asserts his right to violate it altogether, and by an interpretation of the Constitution which is alike hostile to its letter and to the peace and welfare of the country he assumes to himself absolute and unqualified power over all the offices and officers of the country. The removal of Mr. Stanton, contrary to the Constitution and the laws, is the particular crime of the President for which we now demand his conviction. The extent, the evil character, and the dangerous nature of the claims by which he seeks to justify his conduct are controlling considerations. By his conviction you purify the Government and restore it to its original character. By his acquittal you surrender the Government into the hands of an usurping and unscrupulous man, who will use all the vast power he now claims for the corruption of every branch of the public service and the final overthrow of the public liberties.

Nor is it any excuse for the President that he has, as stated in his answer, taken the advice of his Cabinet officers in support of his claim. In the first place, he had no right under the Constitution to the advice of the head of a Department except upon subjects relating to the duties of his Department. If the President has chosen to seek the advice of his Cabinet upon other matters, and they have seen fit to give it upon subjects not relating to their respective Departments, it is advice which he had no constitutional authority to ask, advice which they were not bound to give, and that advice is to him, and for all the purposes of this investigation and trial, as the advice of private persons merely. But of what value can be the advice of men who, in the first instance, admit that they hold their offices by the will of the person who seeks their advice, and who understand most clearly that if the advice they give should be contrary to the wishes of their master they would be at once, and in conformity with their own theory of the rights of the President, deprived of the offices which they hold? Having first made these men entirely dependent upon his will, he then solicits their advice as to the application of the principle by which they admit that they hold their places to all the other officers of the

Government. Could it have been expected that they, under such circumstances, would have given advice in any particular disagreeable to the will of him who sought it?

It was the advice of serfs to their lord, of servants to their master, of slaves to their owner.

The Cabinet respond to Mr. Johnson as old Polonius to Hamlet. Hamlet says:

"Do you see yonder cloud, that's almost in shape of a camel?
"*Polonius.* By the mass, and 'tis like a camel, indeed.
"*Hamlet.* Methinks it is like a weasel.
"*Polonius.* It is backed like a weasel.
"*Hamlet.* Or, like a whale?
"*Polonius.* Very like a whale."

The gentlemen of the Cabinet understood the position that they occupied. The President, in his message to the Senate upon the suspension of Mr. Stanton, in which he says that he took the advice of his Cabinet in reference to his action upon the bill regulating the tenure of certain civil offices, speaks thus:

"The bill had then not become a law. The limitation upon the power of removal was not yet imposed, and there was yet time to make any changes. If any one of these gentlemen had then said to me that he would avail himself of the provisions of that bill in case it became a law, I should not have hesitated a moment as to his removal."

Having indulged his Cabinet in such freedom of opinion when he consulted them in reference to the constitutionality of the bill, and having covered himself and them with public odium by its announcement, he now vaunts their opinions, extorted by power and given in subserviency, that the law itself may be violated with impunity. This, says the President, is the exercise of my constitutional right to the opinion of my Cabinet. I, says the President, am responsible for my Cabinet. Yes, the President is responsible for the opinions and conduct of men who give such advice as is demanded, and give it in fear and trembling lest they be at once deprived of their places. This is the President's idea of a Cabinet, but it is an idea not in harmony with the theory of the Constitution.

The President is a man of strong will, of violent passions, of unlimited ambition, with capacity to employ and use timid men, adhesive men, subservient men, and corrupt men, as the instruments of his designs. It is the truth of history that he has injured every person with whom he has had confidential relations, and many have escaped ruin only by withdrawing from his society altogether. He has one rule of life: he attempts to use every man of power, capacity, or influence within his reach. Succeeding in his attempts, they are in time, and usually in a short time, utterly ruined. If the considerate flee from him, if the brave and patriotic resist his schemes or expose his plans, he attacks them with all the enginery and patronage of his office and pursues them with all the violence of his personal hatred. He attacks to destroy all who will not become his instruments, and all who become his instruments are destroyed in the use. He spares no one. Already this purpose of his life is illustrated in the treatment of a gentleman who was of counsel for the respondent, but who has never appeared in his behalf.

The thanks of the country are due to those distinguished soldiers who, tempted by the President by offers of kingdoms which were not his to give, refused to fall down and worship the tempter. And the thanks of the country are not less due to General Emory, who, when brought into the presence of the President by a request which he could not disobey, at once sought to protect himself against his machinations by presenting to him the law upon the subject of military orders.

The experience and the fate of Mr. Johnson's eminent adherents are lessons of warning to the country and to mankind; and the more eminent and distinguished of his adherents have furnished the most melancholy lessons for this and for succeeding generations.

It is not that men are ruined when they abandon a party; but in periods of national trial and peril the people will not tolerate those who, in any degree or under any circumstances, falter in their devotion to the rights and interests of the Republic. In the public judgment, which is seldom erroneous in regard to public duty, devotion to the country and adherence to Mr. Johnson are and have been wholly inconsistent.

Carpenter's historical painting of Emancipation is a fit representation of an event the most illustrious of any in the annals of America since the adoption of the Constitution. Indeed, it is second to the ratification of the Constitution only in the fact that that instrument, as a means of organizing and preserving the nation, rendered emancipation possible. The principal figure of the scene is the immortal Lincoln, whose great virtues endear his name and memory to all mankind, and whose untimely and violent death, then the saddest event in our national experience, but now not deemed so great a calamity to the people who loved him and mourned for him as no public man was ever before loved or lamented, as is the shame, humiliation, disgrace, and suffering caused by the misconduct and crimes of his successor. It was natural and necessary that the artist should arrange the personages of the group on the right hand and on the left of the principal figure. Whether the particular assignment was by chance, by the taste of the artist, or by the influence of a mysterious Providence which works through human agency, we know not. But on the right of Lincoln are two statesmen and patriots who, in all the trials and vicissitudes of these eventful years, have remained steadfast to liberty, to justice, to the principles of constitutional government. Senators and Mr. Chief Justice, in this presence I venture not to pronounce their names.

On the left of Lincoln are five figures repre-

senting the other members of his Cabinet. One of these is no longer among the living; he died before the evil days came, and we may indulge the hope that he would have escaped the fate of his associates. Of the other four three have been active in counseling and supporting the President in his attempts to subvert the Government. They are already ruined men. Upon the canvas they are elevated to the summit of virtuous ambition. Yielding to the seductions of power they have fallen. Their example and fate may warn us, but their advice and counsel, whether given to this tribunal or to him who is on trial before this tribunal, cannot be accepted as the judgment of wise or of patriotic men.

On motion of Mr. SPRAGUE, at two o'clock and fifteen minutes p. m., the Senate took a recess for fifteen minutes.

At the expiration of the recess the Chief Justice resumed the chair and called the Senate to order.

Mr. SHERMAN. I move that the roll of the Senators be called, so that we may get their attendance.

Mr. CONNESS. That is never done.

Mr. SHERMAN. It can be done. A motion to adjourn will have the same effect practically.

Mr. CONNESS. The Senator may move an adjournment and get a call in that way.

Mr. SHERMAN. I move a call of the Senators.

The CHIEF JUSTICE. The Senator from Ohio moves that the roll of the Senate be called.

Mr. CONNESS. It never has been done.

Mr. SUMNER. The rule provides for a call of the Senate.

Mr. CONNESS. I should like to hear the rule.

Mr. SUMNER. It is Rule 16.

The CHIEF JUSTICE. The Secretary will read the sixteenth rule of the Senate.

The Chief Clerk read as follows:

"16. When the yeas and nays shall be called for by one fifth of the Senators present, each Senator called upon shall, unless for special reasons he be excused by the Senate, declare openly and without debate his assent or dissent to the question. In taking the yeas and nays, and upon a call of the Senate, the names of the Senators shall be called alphabetically."

The CHIEF JUSTICE. If there be no objection the Secretary will call the roll to ascertain who are present.

Mr. DRAKE. I object, sir.

Mr. SHERMAN. I move that there be a call of the Senate.

The motion was agreed to; and the roll being called, forty-four Senators answered to their names.

The CHIEF JUSTICE. There are forty-four Senators answering to their names. The honorable Manager will proceed.

Mr. Manager BOUTWELL. Mr. President, Senators, leaving the discussion of the provisions of the Constitution, I am now prepared to ask your attention to the character and history of the act of 1789, on which stress has been laid by the President in his answer, and by the learned counsel who opened the case for the respondent. The discussion in the House of Representatives in 1789 related to the bill establishing a Department of Foreign Affairs. The first section of that bill, as it originally passed the House of Representatives, after recapitulating the title of the officer who was to take charge of the Department, and setting forth his duties, contained these words in reference to the Secretary of the Department: "To be removable from office by the President of the United States." The House, in Committee of the Whole, discussed this provision during several days, and all the leading members of the body appear to have taken part in the debate. As is well known, there was a difference of opinion at the time as to the meaning of the Constitution. Some contended that the power of removing civil officers was vested in the President absolutely, to be exercised by him, without consultation with the Senate, and this as well when the Senate was in session as during vacations. Others maintained that the initiative in the removal of a public officer must be taken by the President, but that there could be no actual removal except by the advice and consent of the Senate, and that this rule was applicable to the powers of the President as well during the vacation as during the session of the Senate. Others maintained that during the session of the Senate, while the initiative was in the President, the actual removal of a civil officer could be effected only upon the advice and consent of the Senate, but that during the vacations the President might remove such officers and fill their places temporarily, under commissions, to expire at the end of the next session of the Senate. Mr. Madison maintained the first of these propositions, and he may be said to be the only person of historical reputation at the present day who expressed corresponding opinions, although undoubtedly his views were sustained by a considerable number of members. It is evident from an examination of the debate that Mr. Madison's views were gradually and finally successfully undermined by the discussion on that occasion.

As is well known, Roger Sherman was then one of the most eminent members of that body. He was a signer of the Declaration of Independence, a member of the Convention which framed the Constitution of the United States, and a member of the House of Representatives of the First Congress. He was undoubtedly one of the most illustrious men of the constitutional period of American history; and in each succeeding generation there have been eminent persons of his blood and name; but at no period has his family been more distinguished than at the present time. Mr. Sherman took a leading part in the discussion, and there is no doubt that the views which he enter-

tained and expressed had a large influence in producing the result which was finally reached. The report of the debate is found in the first volume of the Annals of Congress; and I quote from the remarks made by Mr. Sherman, preserved on pages 510 and 511 of that volume:

"Mr. SHERMAN. I consider this a very important subject in every point of view, and therefore worthy of full discussion. In my mind it involves three questions. First. Whether the President has, by the Constitution, the right to remove an officer appointed by and with the advice and consent of the Senate. No gentleman contends but that the advice and consent of the Senate are necessary to make the appointment in all cases, unless in inferior offices where the contrary is established by law; but then they allege that, although the consent of the Senate be necessary to the appointment, the President alone, by the nature of his office, has the power of removal. Now, it appears to me that this opinion is ill-founded, because this provision was intended for some useful purpose, and by that construction would answer none at all. I think the concurrence of the Senate as necessary to appoint an officer as the nomination of the President; they are constituted as mutual checks, each having a negative upon the other.

"I consider it as an established principle that the power which appoints can also remove, unless there are express exceptions made. Now, the power which appoints the judges cannot displace them, because there is a constitutional restriction in their favor; otherwise the President, by and with the advice and consent of the Senate, being the power which appointed them, would be sufficient to remove them. This is the construction in England, where the king has the power of appointing judges; it was declared to be during pleasure, and they might be removed when the monarch thought proper. It is a general principle in law as well as reason that there shall be the same authority to remove as to establish. It is so in legislation, where the several branches whose concurrence is necessary to pass a law must concur in repealing it. Just so I take it to be in cases of appointment, and the President alone may remove when he alone appoints, as in the case of inferior offices to be established by law." * * * * *

"As the office is the mere creature of the Legislature we may form it under such regulations as we please, with such powers and duration as we think good policy requires. We may say he shall hold his office during good behavior, or that he shall be annually elected. We may say he shall be displaced for neglect of duty, and point out how he shall be convicted of it without calling upon the President or Senate.

"The third question is, if the Legislature has the power to authorize the President alone to remove this officer whether it is expedient to invest him with it? I do not believe it absolutely necessary that he should have such power, because the power of suspending would answer all the purposes which gentlemen have in view by giving the power of removal. I do not think that the officer is only to be removed by impeachment, as is argued by the gentleman from South Carolina, (Mr. Smith,) because he is the mere creature of the law, and we can direct him to be removed on conviction of mismanagement or inability without calling upon the Senate for their concurrence. But I believe, if we make no such provision, he may constitutionally be removed by the President, by and with the advice and consent of the Senate; and I believe it would be most expedient for us to say nothing in the clause on this subject."

I may be pardoned if I turn aside for a moment, and, addressing myself to the learned gentleman of counsel for the respondent who is to follow me in argument, I request him to refute, to overthrow the constitutional argument of his illustrious ancestor, Roger Sherman. Doing this, he will have overcome the first, but only the first, of a series of obstacles in the path of the President.

In harmony with the views of Mr. Sherman was the opinion expressed by Mr. Jackson, of Georgia, found on page 508 of the same volume. He says:

"I shall agree to give him [that is, the President] the same power in cases of removal that he has in appointing; but nothing more. Upon this principle I would agree to give him the power of suspension during the recess of the Senate. This, in my opinion, would effectually provide against those inconveniences which have been apprehended and not expose the Government to those abuses we have to dread from the wanton and uncontrollable authority of removing officers at pleasure."

It may be well to observe that Mr. Madison, in maintaining the absolute power of the President to remove civil officers, coupled with his opinions upon that point doctrines concerning the power of impeachment which would be wholly unacceptable to this respondent. And, indeed, it is perfectly apparent that without the existence of the power to impeach and remove the President of the United States from office in the manner maintained by Mr. Madison in that debate, that the concession of absolute power of removal would end in the destruction of the Government. Mr. Madison, in that debate, said:

"The danger to liberty, the danger of maladministration, has not yet been found to lie so much in the facility of introducing improper persons into office as in the difficulty of displacing those who are unworthy of the public trust."—*Annals of Congress*, p. 515, vol. 1.

Again, he says:

"Perhaps the great danger, as has been observed, of abuse in the executive power lies in the improper continuance of bad men in office. But the power we contend for will not enable him to do this; for if an unworthy man be continued in office by an unworthy President the House of Representatives can at any time impeach him, and the Senate can remove him, whether the President chooses or not. The danger, then, consists merely in this: the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power and the restraints that operate to prevent it? In the first place he will be impeachable by this House before the Senate for such an act of maladministration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his high trust."—*Annals of Congress*, p. 517, vol. 1.

It is thus seen that Mr. Madison took great care to connect his opinions of the power of removal in the President with a distinct declaration that if this power was improperly exercised by the President he would himself be liable to impeachment and removal from office. If Mr. Madison's opinions were to be accepted by the President as a whole, he would be as defenseless as he is at the present time if arraigned upon articles of impeachment based upon acts of maladministration in the removal of public officers. The result of the debate upon the bill for establishing the executive Department of Foreign Affairs was that the phrase in question which made the head of the Department "removable from office by the President of the United States" was stricken out by a vote of 31 in the affirmative to 19 in the negative, and another form of expression was intro-

duced into the second section which is manifestly in harmony with the views expressed by Mr. Sherman and those who entertained corresponding opinions.

The second section is in these words:

"SEC. 2. *And be it further enacted*, That there shall be in the said Department an inferior officer, to be appointed by the said principal officer, and to be employed therein as he shall deem proper, and to be called the chief clerk of the Department of Foreign Affairs, and who, whenever the said principal officer shall be removed from office by the President of the United States, or in other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers appertaining to said Department."—*United States Statutes-at-Large*, vol. 1, p. 29.

It will be seen that the phrase here employed, "whenever the said principal officer shall be removed from office by the President of the United States," is not a grant of power to the President; nor is it, as was asserted by the counsel for the respondent, a legislative interpretation of a constitutional power. But it is merely at most a *quasi* recognition of a power in the Constitution to be exercised by the President, at some time, under some circumstances, and subject to certain limitations. But there is no statement or declaration of the time when such power could be exercised, the circumstances under which it might be exercised, or the limitations imposed upon its exercise.

All these matters are left subject to the operation of the Constitution and to future legislation. This is in entire harmony with the declaration made by Mr. White, of North Carolina, in the debate of 1789. He says:

"Let us then leave the Constitution to a free operation, and let the President, with or without the consent of the Senate, carry it into execution. Then, if any one supposes himself injured by their determination, let him have recourse to the law, and its decision will establish the true construction of the Constitution."

Mr. Gerry, of Massachusetts, also said:

"Hence all construction of the meaning of the Constitution is dangerous or unnatural, and therefore ought to be avoided. This is our doctrine, that no power of this kind ought to be exercised by the Legislature. But we say, if we must give a construction to the Constitution, it is more natural to give the construction in favor of the power of removal vesting in the President, by and with the advice and consent of the Senate; because it is in the nature of things that the power which appoints removes also."

Again, Mr. Sherman said, speaking of the words which were introduced into the first section and finally stricken out:

"I wish, Mr. Chairman, that the words may be left out of the bill, without giving up the question either way as to the propriety of the measure."

The debate upon the bill relating to the Department for Foreign Affairs occurred in the month of June, 1789; in the following month of August Congress was engaged in considering the bill establishing the Treasury Department. This bill originated in the House, and contained the phrase now found in it, being the same as that contained in the bill establishing the State Department.

The Senate was so far satisfied of the impolicy of making any declaration whatever upon the subject of removal that the clause was struck out by an amendment. The House refused to concur, however, and the Senate, by the casting vote of the Vice President, receded from the amendment.

All this shows that the doctrine of the right of removal by the President survived the debate only as a limited and doubtful right at most.

The results reached by the Congress of 1789 are conclusive upon the following points: that that body was of opinion that the power of removal was not in the President absolutely, to be exercised at all times and under all circumstances; and secondly, that during the sessions of the Senate the power of removal was vested in the President and Senate, to be exercised by their concurrent action; while the debate and the votes indicate that the power of the President to remove from office during the vacation of the Senate was, at best, a doubtful power under the Constitution.

It becomes us next to consider the practice of the Government, under the Constitution, and in the presence of the action of the First Congress, by virtue of which the President now claims an absolute, unqualified, irresponsible power over all public officers, and this without the advice and consent of the Senate or the concurrence of any other branch of the Government. In the early years of the Government the removal of a public officer by the President was a rare occurrence, and it was usually resorted to during the session of the Senate, for misconduct in office only, and accomplished by the appointment of a successor through the advice and consent of the Senate. Gradually a practice was introduced, largely through the example of Mr. Jefferson, of removing officers during the recess of the Senate and filling their places under commissions to expire at the end of the next session. But it cannot be said that this practice became common until the election of General Jackson, in 1828. During his administration the practice of removing officers during the recesses of the Senate was largely increased, and in the year 1832, on the 18th of September, General Jackson removed Mr. Duane from the office of Secretary of the Treasury. This occurred, however, during a recess of the Senate. This act on his part gave rise to a heated debate in Congress and an ardent controversy throughout the country, many of the most eminent men contending that there was no power in the President to remove a civil officer, even during the recess of the Senate. The triumph of General Jackson in that controversy gave a full interpretation to the words which had been employed in the statute of 1789.

But, at the same time, the limitations of that power in the President were clearly settled, both upon the law and upon the Constitution, that whatever might be his power of removal during a recess of the Senate, he had no right to make a removal during a session of the Sen-

ate, except upon the advice and consent of that body to the appointment of a successor. This was the opinion of Mr. Johnson himself, as stated by him in a speech made in the Senate on the 10th of January, 1861:

"I meant that the true way to fight the battle was for us to remain here and occupy the places assigned to us by the Constitution of the country. Why did I make that statement? It was because on the 4th day of March next we shall have six majority in this body; and if, as some apprehended, the incoming Administration shall show any disposition to make encroachments upon the institution of slavery, encroachments upon the rights of the States or any other violation of the Constitution, we, by remaining in the Union and standing at our places, will have the power to resist all these encroachments. How? We have the power even to reject the appointment of the Cabinet officers of the incoming President. Then should we not be fighting the battle in the Union by resisting even the organization of the Administration in a constitutional mode, and thus, at the very start, disable an Administration which was likely to encroach on our rights and to violate the Constitution of the country? So far as appointing even a minister abroad is concerned, the incoming Administration will have no power without our consent if we remain here. It comes into office handcuffed, powerless to do harm. We, standing here, hold the balance of power in our hands; we can resist it at the very threshold effectually, and do it inside of the Union and in our house. The incoming Administration has not even the power to appoint a postmaster whose salary exceeds $1,000 a year without consultation with, and the acquiescence of, the Senate of the United States. The President has not even the power to draw his salary, his $25,000 per annum, unless we appropriate it."—*Congressional Globe*, vol.—, page—.

It may be well observed that, for the purposes of this trial, and upon the question whether the President is or is not guilty under the first three articles exhibited against him by the House of Representatives, it is of no consequence whether the President of the United States has power to remove a civil officer during a recess of the Senate. The fact charged and proved against the President, and on which, as one fact proved against him, we demand his conviction, is, that he attempted to remove Mr. Stanton from the office of Secretary of War during a session of the Senate. It cannot be claimed with any propriety that the act of 1789 can be construed as a grant of power to the President to an extent beyond the practice of the Government for three quarters of a century under the Constitution and under the provisions of the law of 1789. None of the predecessors of Mr. Johnson, from General Washington to Mr. Lincoln, although the act of 1789 was in existence during all that period, had ever ventured to claim that either under that act or by virtue of the Constitution the President of the United States had power to remove a civil officer during a session of the Senate without its consent and advice. The utmost that can be said is, that for the last forty years it had been the practice of the Executive to remove civil officers at pleasure during the recess of the Senate. While it may be urged that this practice, in the absence of any direct legislation upon the subject, had become the common law of the country, protecting the Executive in a policy corresponding to that practice, it is also true, for stronger reasons, that Mr. Johnson was bound by his oath of office to adhere to the practice of his predecessors in other particulars, none of whom had ever ventured to remove a civil officer from his office during the session of the Senate and appoint a successor, either permanent or *ad interim*, and authorize that successor to enter upon the discharge of the duties of such office. The case of Timothy Pickering has been explained and it constitutes no exception. As far as is known to me the lists of removals and appointments introduced by the respondent do not sustain the claim of the answer in regard to the power of removal.

Hence it is that the act of 1789 is no security to this respondent, and hence it is that we hold him guilty of a violation of the Constitution and of his oath of office under the first and third articles of impeachment exhibited against him by the House of Representatives, and this without availing ourselves of the provisions of the tenure-of-office act of March 2, 1867.

I respectfully ask that the views now submitted in reference to the act of 1789, may be considered in connection with the argument I have already offered upon the true meaning of the provisions of the Constitution relating to the appointment of civil officers.

I pass now to the consideration of the act of the 13th of February, 1795, on which the President relies as a justification for his appointment of Lorenzo Thomas as Secretary of War *ad interim*. By this act it is provided:

"In case of vacancy in the office of Secretary of State, the Secretary of the Treasury, or of the Secretary of the Department of War, or of any other officer of either of the said Departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed or such vacancy be filled: *Provided*, That no one vacancy shall be supplied in manner aforesaid, for a longer term than six months."—1 *Statutes-at-Large*, p. 415.

The ingenuity of the President and his counsel has led them to maintain that the phrase "in case of vacancy," used in this statute, relates to any and every vacancy, however produced. But the reading of the entire section, whether casually or carefully, shows that the purpose of the law was to provide a substitute temporarily in case of vacancy whereby the person in office *could not perform the duties of his office*, and necessarily applied only to those contingencies of official life which put it out of the power of the person in office to discharge the duties of the place; such as sickness, absence, or inability of any sort. And yet the President and his counsel contend that a removal by the President is a case of vacancy contemplated by the law, notwithstanding the limitation of the President in his power of appointing an officer temporarily as to those cases which render it impossible for the duly commissioned officer to perform the duties of

his office. When it is considered, as I have shown, that the President had no power—and this without considering the tenure-of-office act of March 2, 1867—to create a vacancy during a session of the Senate, the act of 1795, even upon his construction, furnishes no defense whatever. But we submit that if he had possessed the power which he claims by virtue of the act of 1789, that the vacancy referred to in the act of 1795 is not such a vacancy as is caused by the removal of a public officer, but that that act is limited to those vacancies which arise unavoidably in the public service and without the agency of the President. But there is in the section of the act of 1795, on which the President relies, a proviso which nullifies absolutely the defense which he has set up. This proviso is that no one vacancy shall be supplied in manner aforesaid (that is, by a temporary appointment) for a longer term than six months.

Mr. Johnson maintains that he suspended Mr. Stanton from the office of Secretary of War on the 12th of August last, not by virtue of the tenure-of-office act of March 2, 1867, but under a power incident to the general and unlimited power of removal, which, as he claims, is vested in the President of the United States, and that, from the 12th of August last, Mr. Stanton has not been entitled to the office of Secretary for the Department of War. If he suspended Mr. Stanton as an incident of his general power of removal, then his suspension, upon the President's theory, created a vacancy such as is claimed by the President under the statute of 1795. The suspension of Mr. Stanton put him in such a condition that he "could not perform the duties of the office." The President claims also to have appointed General Grant Secretary of War *ad interim* on the 12th of August last, by virtue of the statute of 1795. The proviso of that statute declares that no one vacancy shall be supplied in manner aforesaid (that is, by temporary appointment) for a longer term than six months. If the act of 1795 were in force, and if the President's theory of his rights under the Constitution and under that act were a valid theory, the six months during which the vacancy might have been supplied temporarily expired by limitation on the 12th day of February, 1868, and yet on the 21st day of February, 1868, the President appointed Lorenzo Thomas Secretary of War *ad interim* to the same vacancy, and this in violation of the statute which he pleads in his own defense. It is too clear for argument that if Mr. Stanton was lawfully suspended, as the President now claims, but not suspended under the tenure-of-office act, then the so-called restoration of Mr. Stanton on the 13th January was wholly illegal. But if the statute of 1795 is applicable to a vacancy created by suspension or removal, then the President has violated it by the appointment of General Thomas Secretary of War *ad interim*. And if the statute of 1795 is not applicable to a vacancy occasioned by a removal, then the appointment of General Thomas Secretary of War *ad interim* is without authority or the color of authority of law.

The fact is, however, that the statute of 1795 is repealed by the operation of the statute of the 20th of February, 1863. (Statutes-at-Large, vol. 12, p. 656.)

If Senators will consider the provisions of the statute of 1863 in connection with the power of removal under the Constitution during a session of the Senate, by and with the advice and consent of the Senate, and the then recognized power of removal by the President during a recess of the Senate to be filled by temporary appointments, as was the practice previous to March 2, 1867, they will find that provision was made by the act of 1863 for every vacancy which could possibly arise in the public service.

The act of February 20, 1863, provides—

"That in case of the death, *resignation*, absence from the seat of Government, or sickness of the head of an executive Department of the Government, or of any officer of either of the said Departments whose appointment is not in the head thereof, *whereby they cannot perform the duties of their respective offices*, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize the head of any other executive Department or other officer in either of said Departments whose appointment is vested in the President, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability shall cease: *Provided*, That no one vacancy shall be supplied in manner aforesaid for a longer term than six months."

Provision was thus made by the act of 1863 for filling all vacancies which could occur under any circumstances. It is a necessary rule of construction that all previous statutes making other and different provisions for the filling of vacancies are repealed by the operation of more recent statutes; and for the plain reason that it is inconsistent with any theory of government that there should be two legal modes in existence at the same time for doing the same thing.

If the view I have presented be a sound one it is apparent that the President's conduct finds no support either in the Constitution, in the act of 1789, or in the legislation of 1795, on which he chiefly relies as a justification for the appointment of Thomas as Secretary of War *ad interim*. It follows, also, that if the tenure-of-office act had not been passed the President would have been guilty of a high misdemeanor, in that he issued an order for the removal of Mr. Stanton from office during the session of the Senate, in violation of the Constitution and of his own oath of office; that he was guilty of a high misdemeanor in the appointment of Lorenzo Thomas as Secretary of War *ad interim*, and this whether the act of the 13th of February, 1795, is in force, or whether the same has been repealed by the statute of 1863. His guilt is thus fully proved and established as charged in the first, second, and third articles of impeachment exhibited against him by the House of Representatives, and this without considering the

requirements or constitutionality of the act regulating the tenure of certain civil offices.

I pass now to the consideration of the tenure-of-office act. I preface what I have to say by calling to your attention that portion of my argument already addressed to you, in which I have set forth and maintained, as I was able, the opinion that the President had no right to make any inquiry whether an act of Congress is or is not constitutional; that, having no right to make such inquiry, he could not plead that he had so inquired and reached the conclusion that the act inquired about was invalid. You will also bear in mind the views presented, that this tribunal can take no notice of any argument or suggestion that a law deemed unconstitutional may be willfully violated by the President. The gist of his crime is that he intentionally disregarded a law, and, in the nature of the case, it can be no excuse or defense that such law, in his opinion, or in the opinion of others, was not in conformity with the Constitution.

In this connection I desire to call your attention to suggestions made by the President, and by the President's counsel—by the President in his message of December, 1867, and by the President's counsel in his opening argument—that if Congress were by legislation to abolish a department of the Government, or to declare that the President should not be Commander-in-Chief of the Army or the Navy, that it would be the duty of the President to disregard such legislation. These are extreme cases and not within the range of possibility. Members of Congress are individually bound by an oath to support the Constitution of the United States, and it is not to be presumed, even for the purpose of argument, that they would wantonly disregard the obligations of their oath, and enact in the form of law rules or proceedings in plain violation of the Constitution. Such is not the course of legislation, and such is not the character of the act we are now to consider. The bill regulating the tenure of certain civil offices was passed by a constitutional majority in each of the two Houses, and it is to be presumed that each Senator and Representative who gave it his support did so in the belief that its provisions were in harmony with the provisions of the Constitution. We are now dealing with practical affairs, and conducting the Government within the Constitution; and in reference to measures passed by Congress under such circumstances, it is wholly indefensible for the President to suggest the course that, in his opinion, he would be justified in pursuing if Congress were openly and wantonly to disregard the Constitution and inaugurate revolution in the Government.

It is asserted by the counsel for the President that he took advice as to the constitutionality of the tenure-of-office act, and being of opinion that it was unconstitutional, or so much of it at least as attempted to deprive him of the power of removing the members of the Cabinet, he felt it to be his duty to disregard its provisions; and the question is now put with feeling and emphasis whether the President is to be impeached, convicted, and removed from office for a mere difference of opinion. True, the President is not to be removed for a *mere* difference of opinion. If he had contented himself with the opinion that the law was unconstitutional, or even with the expression of such an opinion privately or officially to Congress, no exception could have been taken to his conduct. But he has attempted to act in accordance with that opinion, and in that action he has disregarded the requirements of the statute. It is for this action that he is to be arraigned, and is to be convicted. But it is not necessary for us to rest upon the doctrine that it was the duty of the President to accept the law as constitutional and govern himself accordingly in all his official doings. We are prepared to show that the law is in truth in harmony with the Constitution, and that its provisions apply to Mr. Stanton as Secretary for the Department of War.

The tenure-of-office act makes no change in the powers of the President and the Senate, during the session of the Senate, to remove a civil officer upon a nomination by the President, and confirmation by the Senate, of a successor. This was an admitted constitutional power from the very organization of the Government, while the right now claimed by the President to remove a civil officer during a session of the Senate, without the advice and consent of the Senate, was never asserted by any of his predecessors, and certainly never recognized by any law or by any practice. This rule applied to heads of Departments as well as to other civil officers. Indeed, it may be said, once for all, that the tenure by which members of the Cabinet have held their places corresponds in every particular to the tenure by which other civil officers have held theirs. It is undoubtedly true that, in practice, members of the Cabinet have been accustomed to tender their resignations upon a suggestion from the President that such a course would be acceptable to him. But this practice has never changed their legal relations to the President or to the country. There was never a moment of time, since the adoption of the Constitution, when the law or the opinion of the Senate recognized the right of the President to remove a Cabinet officer during a session of the Senate, without the consent of the Senate given through the confirmation of a successor. Hence, in this particular, the tenure-of-office act merely enacted and gave form to a practice existing from the foundation of the Government—a practice in entire harmony with the provisions of the Constitution upon that subject. The chief change produced by the tenure-of-office act had reference to removals during the recess of the Senate. Previous to the 2d of March, 1867, as has been

already shown, it was the practice of the President during the recesses of the Senate to remove civil officers and to grant commissions to other persons under the third clause of the second section of the second article of the Constitution. This power, as has been seen, was a doubtful one in the beginning. The practice grew up under the act of 1789, but the right of Congress by legislation to regulate the exercise of that power was not questioned in the great debate of that year, nor can it reasonably be drawn into controversy now.

The act of March 2, 1867, declares that the President shall not exercise the power of removal, absolutely, during the recess of the Senate, but that if any officer shall be shown, by evidence satisfactory to the President, to be guilty of misconduct in office, or of crime, or for any reason shall become incapable or legally disqualified to perform his duties, the President may suspend him from office and designate some suitable person to perform temporarily the duties of such office until the next meeting of the Senate and the action of the Senate thereon.

By this legislation the removal is qualified and is made subject to the final action of the Senate instead of being absolute, as was the fact under the practice theretofore prevailing. It is to be observed, however, that this feature of the act regulating the tenure of certain civil offices is not drawn into controversy by these proceedings, and therefore it is entirely unimportant to the President whether that provision of the act is constitutional or not. I can, however, entertain no doubt of its constitutionality. The record of the case shows that Mr. Stanton was suspended from office during the recess, but was removed from office, as far as an order of the President could effect his removal, during a session of the Senate. It is also wholly immaterial to the present inquiry whether the suspension of Mr. Stanton on the 12th of August, 1867, was made under the tenure-of-office act, or in disregard of it, as the President now asserts. It being thus clear that so much of the act as relates to appointments and removals from office during the session of the Senate is in harmony with the practice of the Government from the first, and in harmony with the provisions of the Constitution on which that practice was based, and it being admitted that the order of the President for the removal of Mr. Stanton was issued during a session of the Senate, it is unnecessary to inquire whether the other parts of the act are constitutional or not, and also unnecessary to inquire what the provisions of the act are in reference to the heads of the several Executive Departments. I presume authorities are not needed to show that a law may be unconstitutional and void in some of its parts, and the remaining portions continue in full force.

The body of the first section of the act regulating the tenure of certain civil offices is in these words:

"Every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is, and shall be entitled, to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided."

Omitting for the moment to notice the exception, there can be no doubt that this provision would have applied to the Secretary of War, and to every other civil officer under the Government; nor can there be any doubt that the removal of Mr. Stanton during a session of the Senate is a misdemeanor by the law, and punishable as such under the sixth section of the act, unless the body of the section quoted is so controlled by the proviso as to take the Secretary of War out of its grasp. The proviso is in these words:

"That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General shall hold their offices respectively for and during the term of the President by whom they may have been appointed and one month thereafter, subject to removal by and with the advice and consent of the Senate."

We maintain that Mr. Stanton, as Secretary of War, was, on the 2d day of March, 1867, within and included under the language of the proviso, and was to hold his office for and during the term of the President by whom he had been appointed, and one month thereafter, subject to removal, however, by and with the advice and consent of the Senate. We maintain that Mr. Stanton was then holding the office of Secretary of War for and in the term of President Lincoln, by whom he had been appointed; that that term commenced on the 4th of March, 1865, and will end on the 4th of March, 1869. The Constitution defines the meaning of the word "term." When speaking of the President, it says:

"He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows."

Now, then, although the President first elected may die during his term, the office and the term of the office still remain. Having been established by the Constitution, it is not in any degree dependent upon the circumstance whether the person elected to the term shall survive to the end or not. It still is a presidential term. It still is in law the term of the President who was elected to the office. The Vice President was chosen at the same time and elected for the same term. But it is the term of a different office from that of President—the term of the office of Vice President. Mr. Johnson was elected to the office of Vice President for the term of four years. Mr. Lincoln was elected to the office of President for the term of four years. Mr. Lincoln died in the second month of his term, and Mr. Johnson succeeded to the office.

It was not a new office; it was not a new term. He succeeded to Mr. Lincoln's office, and for the remainder of Mr. Lincoln's term of office. He is serving out Mr. Lincoln's term

as President. The law says that the Secretaries shall hold their offices respectively for and during the term of the President by whom they may have been appointed. Mr. Lincoln's term commenced on the 4th of March, 1865. Mr. Stanton was appointed by Mr. Lincoln; he was in office in Mr. Lincoln's term, when the act regulating the tenure of certain civil offices was passed; and by the proviso of that act he was entitled to hold that office until one month after the 4th of March, 1869, unless he should be sooner removed therefrom, by and with the advice and consent of the Senate.

The act of March 1, 1792, concerning the succession, in case the office of President and Vice President both become vacant, recognizes the presidential term of four years as the constitutional term. Any one can understand that in case of vacancy in the office of President and Vice President, and in case of a new election by the people, that it would be desirable to make the election for the remainder of the term. But the act of 1792 recognizes the impossibility of this course in the section which provides that the term of four years for which a President and Vice President shall be elected (that is, in case of a new election, as stated,) shall in all cases commence on the 4th day of March next succeeding the day on which the votes of the electors shall have been given.

It is thus seen that by an election to fill a vacancy the Government would be so far changed in its practical working that the subsequent elections of President, except by an amendment to the Constitution, could never again occur in the years divisible by four, as at present, and might not answer to the election of members to the House of Representatives, for the presidential elections might occur in the years not divisible by two. The Congress of 1792 acted upon the constitutional doctrine that the presidential term is four years and cannot be changed by law.

On the 21st of February, 1868, while the Senate of the United States was in session, Mr. Johnson, in violation of the law—which, as we have already seen, is in strict harmony in this particular with the Constitution and with the practice of every Administration under the Constitution from the beginning of the Government—issued an order for the removal of Mr. Stanton from his office as Secretary for the Department of War. If, however, it be claimed that the proviso does not apply to the Secretary of War, then he does not come within the only exception made in the statute to the general provision in the body of the first section already quoted; and Mr. Stanton, having been appointed to office originally by and with the advice and consent of the Senate, could only be removed by the nomination and appointment of a successor by and with the advice and consent of the Senate. Hence, upon either theory, it is plain that the President violated the tenure-of-office act in the order which he issued on the 21st of February, A. D. 1868, for the removal of Mr. Stanton from the office of Secretary for the Department of War, the Senate of the United States being then in session.

In support of the view I have presented I refer to the official record of the amendments made to the first section of the tenure-of-office act. On the 18th of January, 1867, the bill passed the Senate, and the first section thereof was in these words:

"That every person [excepting the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General] holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is, and shall be, entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided."

On the 2d of February the House passed the bill with an amendment striking out the words included in brackets. This action shows that it was the purpose of the House to include heads of Departments in the body of the bill, and subject them to its provisions as civil officers, who were to hold their places by and with the advice and consent of the Senate, and subject, during the session of the Senate, to removal by and with the advice and consent of the Senate only; but subject to suspension under the second section during a recess of the Senate as other civil officers, by virtue of the words at the close of the section, "except as herein otherwise provided." At the time the bill was pending between the two Houses there was no proviso to the first section, and the phrase "except as otherwise herein provided" related necessarily to the second and to the subsequent sections of the bill. On the 6th of February the Senate refused to agree to the House amendment, and by the action of the two Houses the bill was referred to a committee of conference. The conference committee agreed to strike out the words in brackets agreeably to a vote of the House, but as a recognition of the opinion of the Senate the proviso was inserted which modified in substance the effect of the words stricken out, under the lead of the House, only in this, that the Cabinet officers referred to in the body of the section as it passed the House were to hold their offices as they would have held them if the House amendment had been agreed to without condition, with this exception: that they were to retire from their offices in one month after the end of the term of the President by whom they might have been appointed to office. The object and effect of this qualification of the provision for which the House contended was to avoid fastening, by operation of law, upon an incoming President the Cabinet of his predecessor, with no means of relieving himself from them unless the Senate of the United States was disposed to concur in their removal.

In short, they were to retire by operation of law at the end of one month after the expira-

tion of the term of the President by whom they had been appointed; and in this particular their tenure of office was distinguished by the proviso from the tenure by which other civil officers mentioned in the body of the section were to hold their offices, and their tenure of office is distinguished in no other particular.

The counsel who opened the cause for the President was pleased to read from the Globe the remarks made by Mr. SCHENCK in the House of Representatives, when the report of the conference committee was under discussion. But he read only a portion of the remarks of that gentleman, and connected with them observations of his own, by which he may have led the Senate into the error that Mr. SCHENCK entertained the opinion as to the effect of the proviso which is now urged by the respondent; but, so far from this being the case, the statement made by Mr. SCHENCK to the House is exactly in accordance with the doctrine now maintained by the Managers on the part of the House of Representatives. After Mr. SCHENCK had made the remarks quoted by the counsel for the respondent, Mr. Le Blond, of Ohio, rose and said:

"I would like to inquire of the gentleman who has charge of this report whether it becomes necessary that the Senate shall concur in all appointments of executive officers, and that none of them can be removed after appointment without the concurrence of the Senate?"

Mr. SCHENCK says, in reply:

"That is the case; but their terms of office is limited, (as they are not now limited by law,) so that they expire with the term of service of the President who appoints them, and one month after, in case of death or other accident, until others can be substituted for them by the incoming President."

Mr. Le Blond, continuing, said:

"I understand, then, this to be the effect of the report of the committee of conference: in the event of the President finding himself with a Cabinet officer who does not agree with him, and whom he desires to remove, he cannot do so, and have a Cabinet in keeping with his own views, unless the Senate shall concur."

To this Mr. SCHENCK replies:

"The gentleman certainly does not need that information from me, as this subject has been fully debated in this House."

Mr. Le Blond said, finally:

"Then I hope the House will not agree to the report of the committee of conference."

This debate in the House shows that there was there and then no difference of opinion between Mr. SCHENCK, who represented the friends of the bill, and Mr. Le Blond, who represented the opponents of the bill, that its effect was to confirm the Secretaries who were then in office in their places until one month after the expiration of Mr. Lincoln's term of office, to wit, the 4th day of March, 1869, unless, upon the nomination of successors, they should be removed by and with the advice and consent of the Senate. Nor does the language used by the honorable Senator from Ohio, who reported the result of the conference to the Senate, justify the inference which has been drawn from it by the counsel for the respondent. The charge made by the honorable Senator from Wisconsin, which the honorable Senator from Ohio was refuting, seems to have been, in substance, that the first section of the bill and the proviso to the first section of the bill had been framed with special reference to Mr. Johnson, as President, and to the existing condition of affairs. In response to this the honorable Senator from Ohio said:

"I say that the Senate have not legislated with a view to any persons or any President, and therefore he commences by asserting what is not true. We do not legislate in order to keep in the Secretary of War, the Secretary of the Navy, or the Secretary of State."

It will be observed that this language does not indicate the opinion of the honorable Senator as to the effect of the bill; but it is only a declaration that the object of the legislation was not that which had been intimated or alleged by the honorable Senator from Wisconsin. This view of the remarks of the honorable Senator from Ohio is confirmed by what he afterward said in reply to the suggestion that members of the Cabinet would hold their places against the wishes of the President, when he declares that under such circumstances he, as a Senator, would consent to their removal at any time, showing most clearly that he did not entertain the idea that under the tenure-of-office act it would be in the power of the President to remove a Cabinet officer without the advice and consent of the Senate. And we all agree that in ordinary times, and under ordinary circumstances, it would not only be just and proper for a Cabinet officer to tender his resignation at once, upon the suggestion of the President that it would be acceptable, but we also agree that it would be the height of personal and official indecorum if he were to hesitate for a moment as to his duty in that particular. But the justification of Mr. Stanton, and his claim to the gratitude and encomiums of his countrymen, is, that when the nation was imperiled by the usurpations of a criminally-minded Chief Magistrate, he asserted his constitutional and legal rights to the office of Secretary for the Department of War, and thus by his devotion to principle, and at great personal sacrifices, he has done more than any other man since the close of the rebellion to protect the interests and maintain the rights of the people of the country.

But the strength of the view we entertain of the meaning and scope of the tenure-of-office act is nowhere more satisfactorily demonstrated than in the inconsistencies of the argument which has been presented by the learned counsel for the respondent in support of the President's positions. He says, speaking of the first section of the act regulating the tenure of certain civil offices:

"Here is a section, then, the body of which applies to all civil officers, as well to those then in office as to those who should thereafter be appointed. The body of this section contains a declaration that every such officer 'is,' that is, if he is now in office, and 'shall be,' that is, if he shall hereafter be appointed to office, entitled to hold until a successor is appointed

and qualified in his place. That is the body of the section."

This language of the eminent counsel is not only an admission, but it is a declaration that the Secretary for the Department of War, being a civil officer, as is elsewhere admitted in the argument of the counsel for the respondent, is included in and covered and controlled by the language of the body of this section. It is a further admission that in the absence of the proviso the power of the President over the Secretary for the Department of War would correspond exactly to his power over any other civil officer, which would be merely the power to nominate a successor whose confirmation by the Senate, and appointment, would work the removal of the person in office. When the counsel for the respondent, proceeding in his argument, enters upon an examination of the proviso, he maintains that the language of that proviso does not include the Secretary for the Department of War. If he is not included in the language of the proviso, then upon the admission of the counsel he is included in the body of the bill, so that for the purposes of this investigation and trial it is wholly immaterial whether the proviso applies to him or not. If the proviso does not apply to the Secretary for the Department of War, then he holds his office, as in the body of the section expressed, until removed therefrom by and with the advice and consent of the Senate. If he is covered by the language of the proviso, then a limitation is fixed to his office, to wit: that it is to expire one month after the close of the term of the President by whom he has been appointed, subject, however, to previous removal by and with the advice and consent of the Senate.

I have already considered the question of intent on the part of the President, and maintained that in the willful violation of the law he discloses a criminal intent which cannot be controlled or qualified by any testimony on the part of the respondent.

The counsel for the respondent, however, has dwelt so much at length on the question of intent, and such efforts have been made during the trial to introduce testimony upon this point, that I am justified in recurring to it for a brief consideration of the arguments and views bearing upon and relating to that question. If a law passed by Congress be equivocal or ambiguous in its terms, the Executive, being called upon to administer it, may apply his own best judgment to the difficulties before him, or he may seek counsel from his official advisers or other proper persons; and acting thereupon, without evil intent or purpose, he would be fully justified, and upon no principle of right could he be held to answer as for a misdemeanor in office. But that is not this case. The question considered by Mr. Johnson did not relate to the meaning of the tenure-of-office act. He understood perfectly well the intention of Congress, and he admitted in his veto message that that intention was expressed with sufficient clearness to enable him to comprehend and state it. In his veto message of the 2d of March, 1867, after quoting the first section of the bill to regulate the tenure of certain civil offices, he says:

"In effect the bill provides that the President shall not remove from their places *any civil officers* whose terms of service are not limited by law without the advice and consent of the Senate of the United States. The bill, in this respect, conflicts, in my judgment, with the Constitution of the United States."

His statement of the meaning of the bill relates to all civil officers, to the members of his Cabinet as well as to others, and is a declaration that, under that bill, if it became a law, none of those officers could be removed without the advice and consent of the Senate. He was, therefore, in no doubt as to the intention of Congress as expressed in the bill submitted to him for his consideration, and which afterward became the law of the land. He said to the Senate, "If you pass this bill, I cannot remove the members of my Cabinet." The Senate and the House in effect said, "We so intend," and passed the bill by a two-thirds majority. There was then no misunderstanding as to the meaning or intention of the act. His offense, then, is not, that upon an examination of the statute he misunderstood its meaning and acted upon a misinterpretation of its true import, but that understanding its meaning precisely as it was understood by the Congress that passed the law, precisely as it is understood by the House of Representatives today, precisely as it is presented in the articles of impeachment, and by the Managers before this Senate, he, upon his own opinion that the same was unconstitutional, deliberately, willfully, and intentionally disregarded it. The learned counsel say that he had a right to violate this law for the purpose of obtaining a judicial determination. This we deny. The constitutional duty of the President is to obey and execute the laws. He has no authority under the Constitution, or by any law, to enter into any schemes or plans for the purpose of testing the validity of the laws of the country, either judicially or otherwise. Every law of Congress may be tested in the courts, but it is not made the duty of any person to so test the laws. It is not specially the right of any person to so test the laws, and the effort is particularly offensive in the Chief Magistrate of the country to attempt by any process to annul, set aside, or defeat the laws which by his oath he is bound to execute. Nor is it any answer to say, as is suggested by the counsel for the respondent, that "there never could be a judicial decision that a law is unconstitutional, inasmuch as it is only by disregarding a law that any question can be raised judicially under it." If this be true, it is no misfortune. But the opposite theory, that it is the duty or the right of the President to disregard a law for the purpose of ascertaining judicially whether he has a right to violate a law, is abhorrent to every just principle of govern-

ment, and dangerous in the highest degree to the existence of free institutions.

But his alleged purpose to test the law in the courts is shown to be a pretext merely. Upon his own theory of his rights he could have instituted proceedings by information in the nature of a *quo warranto* against Mr. Stanton on the 13th of January, 1868. More than three months have passed, and he has done nothing whatever. When by Mr. Stanton's action Lorenzo Thomas was under arrest, and proceedings were instituted which might have tested the legality of the tenure-of-office act, Mr. Cox, the President's special counsel, moved to have the proceedings dismissed, although Thomas was at large upon his own recognizance. Can anybody believe that it was Mr. Johnson's purpose to test the act in the courts? But the respondent's insincerity, his duplicity, is shown by the statement which he made to General Sherman in January last. Sherman says, "I asked him why lawyers could not make a case, and not bring me, or an officer, into the controversy? His answer was, 'that it was found impossible, or a case could not be made up;' 'but,' said he, 'if we can bring the case to the courts it would not stand half an hour.'" He now says his object was to test the case in the courts. To Sherman he declares that a case could not be made up, but if one could be made up the law would not stand half an hour. When a case was made up which might have tested the law he makes haste to get it dismissed. Did ever audacity and duplicity more clearly appear in the excuses of a criminal?

This brief argument upon the question of intent seems to me conclusive, but I shall incidentally refer to this point in the further progress of my remarks.

The House of Representatives does not demand the conviction of Andrew Johnson unless he is guilty in the manner charged in the articles of impeachment; nor does the House expect the Managers to seek a conviction except upon the law and the facts considered with judicial impartiality. But I am obliged to declare that I have no capacity to understand those processes of the human mind by which this tribunal, or any member of this tribunal, can doubt, can entertain a reasonable doubt, that Andrew Johnson is guilty of high misdemeanors in office, as charged in each of the first three articles exhibited against him by the House of Representatives.

We have charged and proved that Andrew Johnson, President of the United States, issued an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War while the Senate of the United States was in session, and without the advice and consent of the Senate, in violation of the Constitution of the United States and of his oath of office, and of the provisions of an act passed March 2, 1867, entitled "An act regulating the tenure of certain civil offices," and that he did this with intent so to do; and thereupon we demand his conviction under the first of the articles of impeachment exhibited against him by the House of Representatives.

We have charged and proved that Andrew Johnson, President of the United States, violated the Constitution and his oath of office in issuing an order for the removal of Edwin M. Stanton from the office of Secretary for the Department of War during the session of the Senate, and without the advice and consent of the Senate, and this without reference to the tenure-of-office act; and thereupon we demand his conviction under the first of the articles of impeachment exhibited against him by the House of Representatives.

We have charged and proved that Andrew Johnson, President of the United States, did issue and deliver to one Lorenzo Thomas a letter of authority in writing authorizing and empowering said Thomas to act as Secretary of War *ad interim*, there being no vacancy in said office, and this while the Senate of the United States was in session, and without the advice and consent of the Senate, in violation of the Constitution of the United States, of his oath of office, and of the provisions of an act entitled "An act regulating the tenure of certain civil offices," and all this with the intent so to do; and thereupon we demand his conviction under the second of the articles of impeachment exhibited against him by the House of Representatives.

We have charged and proved that Andrew Johnson, President of the United States, in the appointment of Lorenzo Thomas to the office of Secretary of War *ad interim*, acted without authority of law and in violation of the Constitution and of his oath of office; and this without reference to the tenure-of-office act; and thereupon we demand his conviction under the third of the articles of impeachment exhibited against him by the House of Representatives.

At this point the honorable Manager yielded for an adjournment.

THURSDAY, APRIL 23, 1868.

Mr. Manager BOUTWELL resumed as follows:

Mr. PRESIDENT, SENATORS: The learned counsel for the respondent seems to have involved himself in some difficulty concerning the articles which he terms the conspiracy articles, being articles four, five, six, and seven. The allegations contained in articles four and six are laid under the act of July 31, 1861, known as the conspiracy act. The remarks of the learned counsel seem to imply that articles five and seven are not based upon any law whatever. In this he greatly errs. An examination of articles four and five shows that the substantive allegation is the same in each, the differences being that article four charges the conspiracy with intent, by intimidation and threats, unlawfully to hinder and prevent Edwin M. Stanton from holding the office of Secretary for the Department of War. The persons charged are the respondent and Lorenzo Thomas. And it is alleged that this conspiracy for the purpose set forth was in violation of the Constitution of the United States and of the provisions of an act entitled "An act to punish certain conspiracies," approved July 31, 1861. The fifth article charges that the respondent did unlawfully conspire with one Lorenzo Thomas, and with other persons, to prevent the execution of the act entitled "An act regulating the tenure of certain civil offices," and that in pursuance of that conspiracy they did unlawfully attempt to prevent Edwin M. Stanton from holding the office of Secretary for the Department of War. It is not alleged in the article that this conspiracy is against any particular law, but it is alleged that the parties charged did unlawfully conspire. It is very well known that conspiracies are of two kinds. Two or more persons may conspire to do a *lawful* act by *unlawful* means; or two or more persons may conspire to do an *unlawful* act by *lawful* means. By the common law of England such conspiracies have always been indictable and punishable as misdemeanors. The State of Maryland was one of the original thirteen States of the Union, and the common law of England has always prevailed in that State, except so far as it has been modified by statute. The city of Washington was originally within the State of Maryland, but it was ceded to the United States under the provisions of the Constitution. By a statute of the United States, passed February 27, 1801, (Statutes-at-Large, vol. 2, p. 103,) it is provided:

"That the laws of the State of Maryland, as they now exist, shall be and continue in force in that part of the said district which was ceded by that State to the United States, and by them accepted as aforesaid."

By force of this statute, although probably the law would have been the same without legislation, the English common law of crimes prevails in the city of Washington. By another statute entitled "An act for the punishment of crimes in the District of Columbia," (Statutes-at-Large, vol. 4, p. 450,) approved March 2, 1831, special punishments are affixed to various crimes enumerated when committed in the District of Columbia. But conspiracy is not one of the crimes mentioned. The fifteenth section of that act provides:

"That every other felony, misdemeanor, or offense not provided for by this act may and shall be punished as heretofore, except that in all cases where whipping is part or the whole of the punishment, except in the cases of slaves, the court shall substitute therefor imprisonment in the county jail for a period not exceeding six months."

And the sixteenth section declares—

"That all definitions and descriptions of crimes, all fines, forfeitures, and incapacities, the restitution of property, or the payment of the value thereof, and every other matter not provided for in this act, be and the same shall remain as heretofore."

There can then be no doubt that, under the English common law of crimes, sanctioned and continued by the statutes of the United States in the District of Columbia, the fifth and seventh articles set forth offenses which are punishable as misdemeanors by the laws of the District.

Article six is laid under the statute of 1861, and charges that the respondent did unlawfully conspire with Lorenzo Thomas, by force, to seize, take, and possess the property of the United States in the Department of War, and this with intent to violate and disregard the act entitled "An act regulating the tenure of certain civil offices." The words used in the conspiracy act of 1861 leave room for argument upon the point raised by the learned counsel for the respondent. I admit that the District of Columbia is not included by specific designation; but the reasons for the law

and the natural interpretation of the language justify the view that the act applies to the District. I shall refer to a single authority only upon the point.

The internal-duties act of August 2, 1813, (Statutes, vol. 3, p. 82) subjects, in express terms, the "several Territories of the United States and the District of Columbia" to the payment of the taxes imposed; upon which the question arose whether Congress has power to impose a direct tax on the District of Columbia, in view of the fact that by the Constitution it is provided that "representation and direct taxes shall be apportioned among the several States which may be included within the Union according to their respective numbers."

In the case of Loughborough *vs.* Blake the Supreme Court of the United States unanimously decided, in a brief opinion by Chief Justice Marshall, that although the language of the Constitution apparently excepts the District of Columbia from the imposition of direct taxes, yet the reason of the thing requires us to consider the District as being comprehended, in this respect, within the intention of the Constitution. (Loughborough *vs.* Blake, 5 Wheaton, p. 317.)

The reasoning of the Supreme Court and its conclusion in this case were satisfactory to the bar and the country, and no person has deemed it worth while to raise the question anew under the direct tax act of August 5, 1861, (Statutes 12, 296,) which also comprehends the Territories and the District of Columbia.

But the logical rules of construction applicable to an act of Congress are the same as those applicable to the Constitution. An act of Congress and the Constitution are both laws—nothing more, nothing less—except that the latter is of superior authority. And if, in the construction of the Constitution, it may be satisfactorily maintained that the District of Columbia is to be deemed, because of the reason of things, to be comprehended by a provision of the Constitution which in words, and in their superficial construction, excludes it, must not the same rule of construction produce the same result in the determination of the legal intent and import of an act of Congress, when an obscurity exists in the latter and for the same cause?

The seventh article is laid upon the common law, and charges substantially the same offenses as those charged in the sixth article. The result then is that the fifth and seventh articles, which are based upon the common law, set forth substantially the same offenses which are set forth in the fourth and sixth articles, which are laid upon the statute of July 31, 1861; and as there can be no doubt of the validity of the fifth and seventh articles, it is practically immaterial whether the suggestion made by the counsel for the respondent, that the conspiracy act of 1861 does not include the District of Columbia, is a valid suggestion or not. Not doubting that the Senate will find that the charge of conspiracy is sufficiently laid under existing laws in all the articles, I proceed to an examination of the evidence by which the charge is supported.

It should always be borne in mind that the evidence in proof of conspiracy will generally, from the nature of the crime, be circumstantial; and this case in this particular is no exception to the usual experience in criminal trials. We find, in the first place, if the allegations in the first, second, and third articles have been established, that the President was engaged in an unlawful act. If we find Lorenzo Thomas or any other person coöperating with him upon an agreement or an understanding or an assent on the part of such other person to the prosecution of such unlawful undertaking an actual conspiracy is proved. The existence of the conspiracy being established, it is then competent to introduce the statements and acts of the parties to the conspiracy, made and done while the conspiracy was pending, and in furtherance of the design; and it is upon this ground that testimony has been offered and received of the declarations made by Lorenzo Thomas, one of the parties to the conspiracy, subsequent to the 18th of January, 1868, or perhaps to the 13th of January, 1868—the day on which he was restored to the office of Adjutant General of the Army of the United States by the action of the President, and which appears to have been an initial proceeding on his part for the purpose of accomplishing his unlawful design—the removal of Mr. Stanton from the office of Secretary for the Department of War. The evidence of agreement between the respondent and Thomas is found in the order of the 21st of February, 1868, appointing Thomas, and in the conversation which occurred at the time the order was placed in Thomas's hands. The counsel for the respondent at this point was involved in a very serious difficulty. If he had admitted (which he took care not to do) that the order was purely a military one, he foresaw that the respondent would be involved in the crime of having issued a military order which did not pass through the General of the Army, and thus would be liable to impeachment and removal from office for violating the law of the 2d of March, 1867, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1868, and for other purposes."

If he had declared that it was not a military order, then the transaction confessedly was in the nature of an agreement between the President and Lorenzo Thomas; and if the act contemplated by that agreement was an unlawful act, or if the act were unlawful, and the means employed for accomplishing it were unlawful, then clearly the charge of conspiracy would be maintained. Hence he was careful to say, in denying that the order was a military order, that it nevertheless "invoked that spirit of military obedience which constitutes the strength

of the service." And further, he says of Thomas, that, as a faithful Adjutant General of the Army of the United States, interested personally, professionally, and patriotically to have the office of Secretary of the Department of War performed in a temporary vacancy, was it not his duty to accept the appointment unless he knew that it was unlawful to accept it? The admissions and statements of the learned counsel are to the effect, on the whole, that the order was not a military order, nor do we claim that it was a military order, but it was a letter addressed to General Thomas, which he could have declined altogether without subjecting himself to any punishment by a military tribunal. This is the crucial test of the character of the paper which he received, and on which he proceeded to act. Ignorance of the law, according to the old maxim, excuses no man; and whether General Thomas, at the first interview he had with the President on the 18th of January, 1868, or at his interview with him on the day when he received the letter of appointment, knew that the President was then engaged in an unlawful act, is not material to this inquiry. The President knew that his purpose was an unlawful one, and he then and there induced General Thomas to coöperate with him in the prosecution of the unlawful design. If General Thomas was ignorant of the illegal nature of the transaction, that fact furnishes no legal defense for him, even though morally it might be an excuse for his conduct. But certainly the President, who did know the illegal nature of the proceeding, cannot excuse himself by asserting that his coconspirator was at the time ignorant of the illegal nature of the business in which they were engaged.

It being proved that the respondent was engaged in an unlawful undertaking in his attempt to remove Mr. Stanton from the office of Secretary for the Department of War, that by an agreement or understanding between General Thomas and himself they were to coöperate in carrying this purpose into execution, and it being proved, also, that the purpose itself was unlawful, all the elements of a conspiracy are fully established; and it only remains to examine the testimony in order that the nature of the conspiracy may more clearly appear and the means by which the purpose was to be accomplished may be more fully understood.

The statement of the President in his message to the Senate under date of 12th of December, 1867, discloses the depth of his feeling and the intensity of his purpose in regard to the removal of Mr. Stanton. In that message he speaks of the bill regulating the tenure of certain civil offices at the time it was before him for consideration. He says:

"The bill had not then become a law; the limitation upon the power of removal was not yet imposed, and there was yet time to make any changes. If any one of those gentlemen [meaning the members of his Cabinet] had then said to me that he would avail himself of the provisions of that bill in case it became a law I should not have hesitated a moment as to his removal."

When, in the summer of 1867, the respondent became satisfied that Mr. Stanton not only did not enter into the President's schemes but was opposed to them, and he determined upon his suspension and final removal from the office of Secretary for the Department of War, he knew well that the confidence of the people in Mr. Stanton was very great, and that they would not accept his removal and an appointment to that important place of any person of doubtful position, or whose qualifications were not known to the country. Hence he sought, through the suspension of Mr. Stanton and the appointment of General Grant as Secretary of War *ad interim*, to satisfy the country for the moment, but with the design to prepare the way thereby for the introduction into the War Department of one of his own creatures. At that time it was supposed that the suspension of Mr. Stanton and the appointment of General Grant were made under and by virtue of the act regulating the tenure of certain civil offices; and although the conduct of the President during a period of nearly six months in reference to that office was in conformity to the provisions of that act, it was finally declared by him that what he had done had been done in conformity to the general power which he claims under the Constitution, and that he did not in any way recognize the act as constitutional or binding upon him. His message to the Senate of the 12th of December was framed apparently in obedience to the tenure-of-office act. He charged Mr. Stanton with misconduct in office, which, by that act, had been made a ground for the suspension of a civil officer; he furnished reasons and evidence of misconduct which, as he alleged, had been satisfactory to him, and he furnished such reasons and evidence within twenty days after the meeting of the Senate next following the day of suspension.

All this was in conformity to the statute of March 2, 1867. The Senate proceeded to consider the evidence and reasons furnished by the President, and in conformity to that act passed a resolution, adopted on the 13th of January, 1868, declaring that the reasons were unsatisfactory to the Senate, and that Mr. Stanton was restored to the office of Secretary for the Department of War. Up to that time there had been no official statement or declaration by the President that he had not acted under the tenure-of-office act; but he now assumed that that act had no binding force, and that Mr. Stanton was not lawfully restored to the office of Secretary for the Department of War.

Upon the adoption of the resolution by the Senate General Grant at once surrendered the office to Mr. Stanton. This act upon his part filled the President with indignation toward both General Grant and Mr. Stanton, and from that day he seems to have been under the influence of a settled and criminal purpose to de-

stroy General Grant and to secure the removal of Mr. Stanton. During the month following the restoration of Mr. Stanton the President attempted to carry out his purpose by various and tortuous methods. First he endeavored to secure the support of General Sherman. On two occasions, as is testified by General Sherman, on the 27th and 31st of January, he tendered him the position of Secretary of War *ad interim*. It occurred very naturally to General Sherman to inquire of the President whether Mr. Stanton would retire voluntarily from the office; and also to ask the President what he was to do, and whether he would resort to force if Mr. Stanton would not yield. The President answered, "Oh, he will make no objection; you present the order and he will retire." Upon a doubt being expressed by General Sherman, the President remarked, "I know him better than you do; he is cowardly." The President knew Mr. Stanton too well to entertain any such opinion of his courage as he gave in his answer to General Sherman; the secret of the proceeding, undoubtedly, was this: he desired in the first place to induce General Sherman to accept the office of Secretary of War *ad interim* upon the assurance on his part that Mr. Stanton would retire willingly from his position, trusting that when General Sherman was appointed to and had accepted the place of Secretary of War *ad interim* he could be induced, either upon the suggestion of the President or under the influence of a natural disinclination on his part to fail in the accomplishment of anything which he had undertaken, to seize the War Department by force. The President very well knew that if General Sherman accepted the office of Secretary of War *ad interim* he would be ready at the earliest moment to relinquish it into the hands of the President, and thus he hoped through the agency of General Sherman to secure the possession of the Department for one of his favorites.

During the period from the 13th day of January to the 21st of February he made an attempt to enlist General George H. Thomas in the same unlawful undertaking. Here, also, he was disappointed. Thus it is seen that from August last, the time when he entered systematically upon his purpose to remove Mr. Stanton from the office of Secretary for the Department of War, he has attempted to secure the purpose he had in view through the personal influence and services of the three principal officers of the Army; and that he has met with disappointment in each case. Under these circumstances nothing remained for the respondent but to seize the office by an open, willful, defiant violation of law; and as it was necessary for the accomplishment of his purpose that he should obtain the support of some one, and as his experience had satisfied him that no person of capacity or respectability or patriotism would unite with him in his unlawful enterprise, he sought the assistance and aid of Lorenzo Thomas. This man, as you have seen him, is an old man, a broken man, a vain man, a weak man, utterly incapable of performing any important public service in a manner creditable to the country; but possessing, nevertheless, all the qualities and characteristics of a subservient instrument and tool of an ambitious, unscrupulous man. He readily accepted the place which the President offered him, and there is no doubt that the declarations which he made to Wilkeson, BURLEIGH, and Karsner were made when he entertained the purpose of executing them, and made also in the belief that they were entirely justified by the orders which he had received from the President, and that the execution of his purpose to seize the War Department by force would be acceptable to the President. That he threatened to use force there is no doubt from the testimony, and he has himself confessed substantially the truth of the statements made by all the witnesses for the prosecution who have testified to that fact.

These statements were made by Thomas on and after the 21st of February, when he received his letter of authority, in writing, to take possession of the War Department. The agreement between the President and Thomas was consummated on that day. With one mind they were then and on subsequent days engaged and up to the present time they are engaged in the attempt to get possession of the War Department. Mr. Stanton, as the Senate by its resolution has declared, being the lawful Secretary of War, this proceeding on their part was an unlawful proceeding. It had in view an unlawful purpose; it was therefore in contemplation of the law a conspiracy, and the President is consequently bound by the declarations made by Thomas in regard to taking possession of the War Department by force. Thomas admits that on the night of the 21st it was his purpose to use force; but on the morning of the 22d his mind had undergone a change and he then resolved not to use force. We do not know precisely the hour when his mind underwent this change, but the evidence discloses that upon his return from the supreme court of the District, where he had been arraigned upon a complaint made by Mr. Stanton, which, according to the testimony, was twelve o'clock or thereabouts, he had an interview with the President; and it is also in evidence that at or about the same time the President had an interview with General Emory, from whom he learned that that officer would not obey a command of the President unless it passed through General Grant, as required by law.

The President understood perfectly well that he could neither obtain force from General Grant nor transmit an order through General Grant for the accomplishment of a purpose manifestly unlawful; and inasmuch as General Emory had indicated to him in the most distinct and emphatic manner his opinion that

the law requiring all orders to pass through the headquarters of the General commanding was constitutional, indicating also his purpose to obey the law, it was apparent that at that moment the President could have had no hope of obtaining possession of the Department of War by force. It is a singular coincidence in the history of this case that at or about the same time General Thomas had an interview with the President and came to the conclusion that it would not be wise to resort to force.

The President has sought to show his good intention by the fact that, on the 22d or the 24th of February, he nominated Hon. Thomas Ewing, senior, as Secretary for the Department of War. Mr. Ewing is not an unknown man. He has been a member of the Senate and the head of the Treasury Department. His abilities are undoubted, but at the time of his nomination he was in the seventy-ninth year of his age, and there was no probability that he would hold the office a moment longer than his sense of public duty required. It was the old game of the President—the office in the hands of his own tool or in the hands of a man who would gladly vacate it at any moment. This was the necessity of his position, and throws light upon that part of his crime which is set forth in the eleventh article.

For, in fact, his crime is one—the subversion of the Government. From the nature of the case we are compelled to deal with minor acts of criminality by which he hoped to consummate this greatest of crimes.

In obedience to this necessity he appointed Grant, hoping to use him and his influence with the Army, and failing in this, to get possession of the place and fill it with one of his own satellites. Foiled and disappointed in this scheme, he sought to use, first, General Sherman, then General George H. Thomas, then Hon. Thomas Ewing, senior, knowing that neither of these gentlemen would retain the office for any length of time. There were men in the country who would have accepted the office and continued in it and obeyed the Constitution and the laws. Has he named any such person; has he suggested any such person? His appointments and suggestions of appointments have been of two sorts—honorable men, who would not continue in the office, or dishonorable, worthless men, who were not fit to hold the office.

The name of General Cox, of Ohio, was mentioned in the public journals; it was mentioned, probably, to the President. Did it meet with favor? Did he send his name to the Senate? No.

General Cox, if he had accepted the office at all, would have done so with the expectation of holding it till March, 1869, and with the purpose of executing the duties of the trust according to the laws and the Constitution. These were purposes wholly inconsistent with the President's schemes of usurpation. But is it to be presumed or imagined that when the President issued his order for the removal of Mr. Stanton, and his letter of authority to Lorenzo Thomas, on the 21st of February, he had any purpose of appointing Mr. Ewing Secretary of War? Certainly not. On the afternoon of the 21st he informs his Cabinet that Stanton was removed and that Thomas had possession of the office. He then so believed. Thomas had deceived or misled him. On the 22d instant he had discovered that Stanton held on to the place, and that Emory could not be relied upon for force.

What was now his necessity? Simply a resort to his old policy. He saw that it was necessary to avoid impeachment if possible, and also to obtain the sanction of the Senate to a nomination which would work the removal of Mr. Stanton, and thus he would triumph over his enemies and obtain condonation for his crimes of the 21st of February. A well-laid scheme, but destined to fail and to furnish evidence of his own guilty purposes. With the office in the possession of Mr. Ewing he foresaw that for the prosecution of his own plans the place would always be vacant.

Thus has this artful man pursued the great purpose of his life. Consider the other circumstances. On the 1st of September last General Emory was appointed to the command of the department of Washington. He has exhibited such sterling honesty and vigorous patriotism in these recent troubles and during the war that he can bear a reference to his previous history. He was born in Maryland, and in the early part of the war the public mind of the North questioned his fidelity to the Union. His great services and untarnished record during the war are a complete defense against all suspicion, but is it too much to believe that Mr. Johnson entertained the hope that General Emory might be made an instrument of his ambition? Nobly has General Emory undeceived the President and gained additional renown in the country. In General Lorenzo Thomas the President was not deceived. His complicity in recent unlawful proceedings justifies the suspicions entertained by the country in 1861 and 1862 touching his loyalty. Thomas and the President are in accord. In case of the acquittal of the President, they are to issue an order to General Grant putting Thomas in possession of the reports of the Army to the War Department.

Is there not in all this evidence of the President's criminal intention? Is not his whole course marked by duplicity, deception, and fraud? "All things are construed against the wrong-doer" is the wise and just maxim of the law. Has he not trifled with and deceived the Senate? Has he not attempted to accomplish an unlawful purpose by disingenuous, tortuous, criminal means? His criminal intent is in his willful violation of the law, and his criminal intent is, moreover, abundantly proved by all the circumstances attending the violation of the law.

His final resort for safety was the Senate, praying for the confirmation of Mr. Ewing. On the 21st of February he hoped that Stanton would yield willingly or that Emory could be used to remove him. On the 22d he knew that Stanton was determined to remain, that Emory would not furnish assistance, that it was useless to appeal to Grant. He returns to his old plan of filling the War Office by the appointment of a man who would yield the place at any moment; and now he asks you to accept as his justification an act which was the last resort of a criminal attempting to escape the judgment due to his crimes. Upon this view of the law and the facts we demand a conviction of the respondent upon articles four, five, six, and seven exhibited against him by the House of Representatives.

The evidence introduced tending to show a conspiracy between Johnson and Thomas to get possession of the War Department tends also, connected with other facts, to show the purpose of the President to obtain possession of the Treasury Department. Bearing in mind his claim that he can suspend or remove from office, without the advice and consent of the Senate, any civil officer, and bearing in mind, also, that the present Secretary of the Treasury supports this claim, and every obstacle to the possession of the Treasury Department is removed. If the Secretary should decline to coöperate it would only be necessary for the President to remove him from office and place the Treasury Department in the hands of one of his own creatures.

Upon the appointment of Thomas as Secretary of War *ad interim* the President caused notice to be given thereof to the Secretary of the Treasury, accompanied with the direction, under the President's own hand, to that officer to govern himself accordingly. It is also proved that on the 22d day of December Mr. Johnson appointed Mr. Cooper, who had been his Private Secretary and intimate friend, Assistant Secretary of the Treasury.

The evidence fully sustains the statements made in the opening argument of Manager BUTLER in support of article nine. The facts in regard to General Emory's interview with the President were then well known to the Managers, and the argument and view presented in the opening contain all that is necessary to be said upon that article.

The learned counsel who opened the case for the President seems not to have comprehended the nature of the offense set forth in the tenth article. His remarks upon that article proceeded upon the idea that the House of Representatives arraign the President for slandering or libeling the Congress of the United States; no such offense is charged, nor is it claimed by the Managers that it would be possible for Mr. Johnson or any other person to libel or slander the Government. It is for no purpose of protection or indemnity or punishment that we arraign Mr. Johnson for words spoken in Washington, Cleveland, and St. Louis. We do not arraign him for the words spoken; but the charge in substance is, that a man who could utter the words which as is proved were uttered by him is unfit for the office he holds. We claim that the common law of crimes, as understood and enforced by Parliament in cases of impeachment, is in substance this: That no person in office shall do any act contrary to the good morals of the office; and that, when any officer is guilty of an act contrary to the good morals of the office which he holds, that act is a misdemeanor for the purpose of impeachment and removal from office.

Judge Chase was impeached and escaped conviction by four votes only for words spoken from the bench of the circuit court sitting in Baltimore; words which are decorous and reputable when compared with the utterances of Mr. Johnson. Judge Humphreys was convicted and removed from office for words spoken treasonable in character, but not as much calculated to weaken and bring the Government of the United States into contempt as were the words uttered by Mr. Johnson in his speech of the 18th of August, 1866. Judge Humphreys was convicted by the unanimous vote of the Senators, nineteen of whom now sit on this trial. If a magistrate can ever be guilty, for words spoken, of an impeachable misdemeanor, there can be no doubt that Mr. Johnson is so guilty.

I ask you to consider in comparison, or in contrast, the nature of the language used by Chase, Humphreys, and Johnson, as set forth in the articles of impeachment preferred in the several cases.

The eighth article in the case of Chase is in these words:

"And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those governments, respectively, are highly conducive to that public harmony without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at the circuit court for the district of Maryland, held at Baltimore in the month of May, 1803, pervert his official right and duty to address the grand jury then and there assembled on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury and of the good people of Maryland against their State government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury and of the good people of Maryland against the Government of the United States, by delivering opinions which, even if the judiciary were competent to their expression on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra-judicial, and tending to prostitute the high judicial character with which he was invested to the low purpose of an electioneering partisan."

The first article against Humphreys was as follows:

"That, regardless of his duties as a citizen of the United States, and unmindful of the duties of his said office, and in violation of the sacred obligation of his official oath, 'to administer justice without respect to persons,' and faithfully and impartially discharge all the duties incumbent upon him as judge of the district court of the United States for the several districts of the State of Tennessee, agreeable to the Constitution and laws of the United States,' the said West H. Humphreys, on the 29th day of December, A. D. 1860, in the city of Nashville, in said State, the said West H. Humphreys then being a citizen of the United States, and owing allegiance thereto, and then and there being judge of the district court of the United States for the several districts of said State, at a public meeting on the day and year last aforesaid, held in said city of Nashville, and in the hearing of divers persons then and there present, did endeavor by public speech to incite revolt and rebellion within said State against the Constitution and Government of the United States, and did then and there publicly declare that it was the right of the people of said State, by an ordinance of secession, to absolve themselves from all allegiance to the Government of the United States, the Constitution, and laws thereof."

The offense with which Humphreys is charged in this article was committed on the 29th day of December, 1860, before the fall of Sumter, and when only one State had passed an ordinance of secession. The declaration was merely a declaration in a public speech that the State of Tennessee had the right to secede from the Union.

The President, in his speech of the 18th of August, 1866, at Washington, says:

"We have witnessed in one department of the Government every effort, as it were, to prevent the restoration of peace, harmony, and union; we have seen, as it were, hanging upon the verge of the Government, as it were, a body calling or assuming to be the Congress of the United States, when it was but a Congress of a part of the States; we have seen Congress assuming to be for the Union when every step they took was to perpetuate dissolution and make dissolution permanent. We have seen every step that has been taken, instead of bringing about reconciliation and harmony, has been legislation that took the character of penalties, retaliation, and revenge. This has been the course; this has been the policy of one department of your Government."

These words have been repeated so frequently, and the public ear is so much accustomed to them, that they have apparently lost their influence upon the public mind. But it should be observed that these words, as has been proved by the experience of two years, were but the expression of a fixed purpose of the President. His design was to impair, to undermine, and, if possible, to destroy the influence of Congress in the country. Having accomplished this result, the way would then have been open to him for the prosecution of his criminal design to reconstruct the Government in the interest of the rebels, and, through his influence with them, to secure his own election to the Presidency in 1868. It must, however, be apparent that the words in the speech of Mr. Johnson are of graver import than the words which were spoken by Judge Chase to the grand jury at Baltimore, or those uttered by Judge Humphreys to the people of Tennessee. And yet the latter was convicted by a unanimous vote of this Senate; and the former escaped conviction by four votes only. These words are of graver import, not merely in the circumstance that they assail a department of the Government, but in the circumstance that they were uttered by the President of the United States in the Executive Mansion, and in his capacity as President of the United States, when receiving the congratulations and support of a portion of the people of the country, tendered to him in his office as Chief Magistrate. Judge Chase, although a high officer of the Government, was without political influence and without patronage; his personal and official relations were limited, and his remarks were addressed to the grand jury of a judicial district of the country merely.

Judge Humphreys was comparatively unknown; and although his words were calculated to excite the citizens of Tennessee, and induce them to engage in unconstitutional undertakings, his influence was limited measurably to the people of that State.

Mr. Johnson addressed the whole country; and holding in his hands the immense patronage and influence belonging to the office of President, he was able to give practical effect to the declarations he then made. The nature of the respondent's offense is illustrated by the law in reference to the duty of officers and soldiers of the Army, although the law is not applicable to the President:

"Any officer or soldier who shall use contemptuous or disrespectful words against the President of the United States, against the Vice President thereof, against the Congress of the United States, shall be cashiered or otherwise punished, as a court-martial shall direct."—*Statutes-at-Large*, vol. 2, p. 360, April 10, 1806.

Moreover, in the case of Judge Chase, as is stated by Mr. Dane in his "Abridgment," (vol. 7, chap. 222:)

"On the whole evidence it remained in doubt what words he did utter. The proof of seditious intent rested solely on the words themselves; and as the words were not clearly proved the intent was in doubt."

In the case of Mr. Johnson there is no doubt about the words uttered; they have been fully and explicitly proved. Indeed, they are not denied by the respondent. The unlawful intent with which he uttered the words not only appears from the character of the language employed, but it is proved by the history of his Administration. In his message of the 22d of June, 1866, relating to the constitutional amendment, in his annual message of December, 1866, and in numerous other declarations, he has questioned and substantially denied the legality of the Congress of the United States.

In the trial of Judge Chase it was admitted by the respondent "that for a judge to utter seditious sentiments with intent to excite sedition would be an impeachable offense." (Dane's Abridgment, vol. 7, chap. 222.) And this not under the act known as the "sedition act;" for that had been previously repealed; but upon the general principle that an officer whose

duty it is to administer the law has no right to use language calculated to stir up resistance to the law. If this be true of a judge, with stronger reason it is true of the President of the United States, that he should set an example of respect for all the departments of the Government and of reverence for and obedience to the laws of the land.

The speeches made by the President at Cleveland and St. Louis, which have been proved and are found in the record of the case, contain numerous passages similar in character to that extracted from his speech of the 18th of August, 1866, and all calculated and designed to impair the just authority of Congress. While these declarations have not been made the basis of substantive charges in the articles of impeachment, they furnish evidence of the unlawful intent of the President in his utterance of the 18th of August, and also of the fact that that utterance was not due to any temporary excitement or transient purpose which passed away with the occasion which had called it forth. It was a declaration made in accordance with a fixed design, which had obtained such entire control of his nature that whenever he addressed public assemblies he gave expression to it. The evidence which has been submitted by the respondent bearing upon the tenth article indicates a purpose, in argument, to excuse the President upon the ground that the remarks of the people stimulated, irritated, and excited him to such an extent that he was not wholly responsible for what he said. If this were true, it would exhibit great weakness of character; but as a matter of fact it is not true. The taunts and gibes of the people served only to draw from him those declarations which were in accord with the purposes of his life. This is shown by the fact that all his political declarations made at Cleveland and at St. Louis, though made under excitement, are in entire harmony with the declarations made by him in the East Room of the Executive Mansion, on the 18th of August, 1866, when he was free from any disturbing influence, and expressed himself with all the reserve of which his nature is capable.

The blasphemous utterances at St. Louis cannot be aggravated by me, nor can they be extenuated by anything which counsel for the respondent can offer. They exhibit the character of the speaker.

Upon these facts thus proved and the views presented we demand the conviction of the respondent of the misdemeanors charged in the tenth article.

Article eleven sets forth that the object of the President in most of the offenses alleged in the preceding articles was to prevent the execution of the act passed March 2, 1867, entitled, "An act for the more efficient government of the rebel States." It is well known, officially and publicly, that on the 29th of May, 1865, Mr. Johnson issued a proclamation for the reorganization of the government of North Carolina, and that that proclamation was followed by other proclamations, issued during the next four months, for the government of the several States which had been engaged in the rebellion. Upon the death of Mr. Lincoln Mr. Johnson entered upon the office of President in a manner which indicated that, in his judgment, he had been long destined to fill the place, and that the powers of the office were to be exercised by him without regard to the other departments of the Government. In his proclamation of the 29th of May, and in all the proclamations relating to the same subject, he had assumed that in his office as President he was the "United States," for the purpose of deciding whether, under the Constitution, the government of a State was republican in form or not; although by a decision of the Supreme Court it is declared that this power is specially vested in the two Houses of Congress. In these proclamations he assumed, without authority of law, to appoint, and he did appoint, Governors of the several States thus organized. In fine, between the 29th of May, 1865, and the assembling of Congress in December of that year, he exercised sovereign power over the territory and people of the eleven States that had been engaged in the rebellion.

On the assembling of Congress in the month of December he informed the Senate and House of Representatives that the Union was restored, and that nothing remained for the two Houses but severally to accept as Senators and Representatives such loyal men as had been elected by the Legislatures and people of the several States. Congress refused to ratify or to recognize those proceedings upon the part of the President as legal or proper proceedings, and from that time forward he has been engaged in various projects for the purpose of preventing the reconstruction of the Union on any other plan than that which he had inaugurated. In the execution of this design he attempted to deprive Congress of the confidence of the people of the country; hence it was that, among other things, on the 18th day of August, 1866, at the city of Washington, as set forth in the tenth and eleventh articles, he did in a public speech declare and affirm in substance that the Thirty-Ninth Congress of the United States was not a Congress authorized by the Constitution to exercise legislative power under the same; but, on the contrary, was a Congress of only a part of the States.

In the further execution of his purpose to prevent the reconstruction of the Union upon any plan except that which he had inaugurated, he attempted to prevent the ratification by the several States of the amendment to the Constitution known as article fourteen. By the Constitution the President has no power to participate in amendments or in propositions for amendments thereto; yet, availing himself of the circumstance of the passage of a resolution by the House of Representatives on the 13th day of June, 1866, requesting the Presi-

dent to submit to the Legislatures of the several States the said additional article to the Constitution of the United States, he sent to the Senate and House of Representatives a message in writing, in which he says:

"Even in ordinary times any question of amending the Constitution must be justly regarded as of paramount importance. This importance is at the present time enhanced by the fact that the joint resolution was not submitted by the two Houses for the approval of the President, and that of the thirty-six States which constitute the Union eleven are excluded from representation in either House of Congress, although, with the single exception of Texas, they have been entirely restored to all their functions as States, in conformity with the organic law of the land, and have appeared at the national Capitol by Senators and Representatives who have applied for and have been refused admission to the vacant seats. Nor have the sovereign people of the nation been afforded an opportunity of expressing their views upon the important questions which the amendment involves. Grave doubts, therefore, may naturally and justly arise as to whether the action of Congress is in harmony with the sentiments of the people, and whether State Legislatures, elected without reference to such an issue, should be called upon by Congress to decide respecting the ratification of the proposed amendment."

He also says:

"A proper appreciation of the letter and spirit of the Constitution, as well as of the interests of national order, harmony, and union, and a due deference for an enlightened public judgment, may at this time well suggest a doubt whether any amendment to the Constitution ought to be proposed by Congress and pressed upon the Legislatures of the several States for final decision until after the admission of such loyal Senators and Representatives of the now unrepresented States as have been, or as may hereafter be, chosen in conformity with the Constitution and laws of the United States."

This message was an extra-official proceeding, inasmuch as his agency in the work of amending the Constitution is not required; and it was also a very clear indication of an opinion on his part that, inasmuch as the eleven States were not represented, the Congress of the United States had no power to act in the matter of amending the Constitution.

The proposed amendment to the Constitution contained provisions which were to be made the basis of reconstruction. The laws subsequently passed by Congress recognize the amendment as essential to the welfare and safety of the Union. It is alleged in the eleventh article that one of the purposes of the President in the various unlawful acts charged in the several articles of impeachment, and proved against him, was to prevent the execution of the act entitled "An act for the more efficient government of the rebel States," passed March 2, 1867. In the nature of the case it has not been easy to obtain testimony upon this point, nor upon any other point touching the misconduct and crimes of the President. His declarations and his usurpations of power have rendered a large portion of the officeholders of the country for the time being subservient to his purposes; they have been ready to conceal and reluctant to communicate any evidence calculated to implicate the President. His communications with the South have been generally, and it may be said almost exclusively, with the men who had participated in the rebellion, and who are now hoping for final success through his aid. They have looked to him as their leader, by whose efforts and agency in the office of President of the United States they were either to accomplish the objects for which the war was undertaken, or at least to secure a restoration to the Union under such circumstances that, as a section of the country and an interest in the country, they should possess and exercise that power which the slaveholders of the South possessed and exercised previous to the rebellion. These men have been bound to him by the strong bonds of hope, fear, and ambition. The corruptions of the public service have enriched multitudes of his adherents and quickened and strengthened the passion of avarice in multitudes more. These classes of men, possessing wealth and influence in many cases, have exerted their power to close up every avenue of information. Hence the efforts of the committees of the House of Representatives and the efforts of the Managers to ascertain the truth and to procure testimony which they were satisfied was in existence have been defeated often by the devices and machinations of those who in the North and in the South are supposed to be allied to the President. There can, however, be no doubt that the President in every way open to him used his personal and official influence to defeat the ratification of the constitutional amendment. Evidence of such disposition and of the fact also is found in the telegraphic correspondence of January, 1867, between Mr. Johnson and Lewis E. Parsons, who had been previously appointed Governor of Alabama by the President. It is as follows:

MONTGOMERY, ALABAMA, *January* 17, 1867.

Legislature in session. Efforts making to reconsider vote on constitutional amendment. Report from Washington says it is probable an enabling act will pass. We do not know what to believe. I find nothing here. LEWIS E. PARSONS,
Exchange Hotel.

His Excellency ANDREW JOHNSON, *President.*

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UNITED STATES MILITARY TELEGRAPH,
EXECUTIVE OFFICE,
WASHINGTON, D. C., *January* 17, 1867.

What possible good can be obtained by reconsidering the constitutional amendment? I know of none in the present posture of affairs; and I do not believe the people of the whole country will sustain any set of individuals in attempts to change the whole character of our Government by enabling acts or otherwise. I believe, on the contrary, that they will eventually uphold all who have patriotism and courage to stand by the Constitution and who place their confidence in the people. There should be no faltering on the part of those who are honest in their determination to sustain the several coördinate departments of the Government in accordance with its original design. ANDREW JOHNSON.

Hon. LEWIS E. PARSONS, *Montgomery, Alabama.*

This correspondence shows his fixed purpose to defeat the congressional plan of reconstruction. Pursuing the subject further it is easy to discover and comprehend his entire scheme of criminal ambition. It was no less than this: to obtain command of the War Department

and of the Army, and by their combined power to control the elections of 1868 in the ten States not yet restored to the Union. The congressional plan of reconstruction contained as an essential condition the extension of the elective franchise to all loyal male citizens, and the exclusion from the franchise of a portion of those who had been most active in originating and carrying on the rebellion. The purpose of Mr. Johnson was to limit the elective franchise to white male citizens, and to permit the exercise of it by all such persons without regard to their disloyalty. If he could secure the control of the War Department and of the Army it would be entirely practicable, and not only practicable but easy, for him in the coming elections quietly to inaugurate a policy throughout the ten States by which the former rebels, strengthened by the support of the Executive here, and by the military forces distributed over the South, would exclude from the polls every colored man and permit the exercise of the elective franchise by every white rebel. By these means he would be able to control the entire vote of the ten rebel States; by the same means, or indeed by the force of the facts, he would be able to secure the election of delegates to the Democratic national convention favorable to his own nomination to the Presidency. The vote of these ten States in the convention, considered in connection with the fact that he and his friends could assure delegates from other sections of the country that, if he were nominated, he could control beyond peradventure the electoral vote of these ten States, would have secured his nomination. This he confidently anticipated. Nor, indeed, can there be much doubt that this scheme would have been successful; but it was apparent that there was no possibility of his obtaining the control of the War Department and of the Army unless he could disregard and break down the act regulating the tenure of certain civil offices, passed March 2, 1867. If, however, he could annul or disregard or set aside the provisions of that act, then the way was open for the successful consummation of his plan. With thousands and tens of thousands of office holders, scattered all over the country, depending upon him for their offices and for the emoluments of their offices, he would be able to exert a large influence, if not absolutely to control the nominations of the Democratic party in every State of the Union. With the War Department in his hands, and the tenure-of-office act broken down, he would be able to remove General Grant, General Sherman, General Sheridan, or any other officer, high or low, who, in his opinion, or upon the facts, might be an obstacle in his way. With the Army thus corrupted and humiliated, its trusted leaders either driven from the service or sent into exile in distant parts of the country, he would be able to wield the power of that vast organization for his own personal advantage.

Under these circumstances it was not probable merely, but it was as certain as anything in the future could be, that he would secure, first, the nomination of the Democratic party in the national nominating convention; and secondly, that he would secure the electoral votes of these ten States. This being done, he had only to obtain enough votes from the States now represented in Congress to make a majority of electoral votes, and he would defy the House and Senate should they attempt to reject the votes of the ten States, and this whether those States had been previously restored to the Union or not. In a contest with the two Houses he and his friends and supporters, including the War Department, the Treasury Department, and the Army and Navy, would insist that he had been duly elected President, and by the support of the War Department, the Treasury Department, the Army, and the Navy, he would have been inaugurated on the 4th of March next President of the United States for four years.

That the President was and is hostile to Mr. Stanton, and that he desired his removal from office, there is no doubt; but he has not assumed the responsibility which now rests upon him, he has not incurred the hazard of his present position, for the mere purpose of gratifying his personal feelings toward Mr. Stanton. He disregarded the tenure-of-office act; he first suspended and then removed Mr. Stanton from the office of Secretary for the Department of War; he defied the judgment of and the advice and authority of the Senate; he incurred the risk of impeachment by the House of Representatives, and trial and conviction by this tribunal, under the influence of an ambition unlimited and unscrupulous, which dares anything and everything necessary to its gratification. For the purpose of defeating the congressional plan of reconstruction he has advised and encouraged the people of the South in the idea that he would restore them to their former privileges and power; that he would establish a white man's Government; that he would exclude the negroes from all participation in political affairs; and, finally, that he would accomplish in their behalf what they had sought by rebellion, but by rebellion had failed to secure. Hence it is through his agency and by his influence the South has been given up to disorder, rapine, and bloodshed; hence it is that since the surrender of Lee and Johnston thousands of loyal men, black and white, have been murdered in cold blood or subjected to cruelties and tortures such as in modern times have been perpetrated only by savage nations and in remote parts of the world; hence it is that twelve million people are without law, without order, unprotected in their industry or their rights; hence it is that ten States are without government and unrepresented in Congress; hence it is that the people of the North are even now uncertain whether the rebellion, vanquished in the

field, is not finally to be victorious in the councils and in the Cabinet of the country; hence it is that the loyal people of the entire Union look upon Andrew Johnson as their worst enemy; hence it is that those who participated in the rebellion, and still hope that its power may once more be established in the country, look upon Andrew Johnson as their best friend, and as the last and chief supporter of the views which they entertain.

The House of Representatives has brought this respondent to your bar for trial, for conviction, and for judgment; but the House of Representatives, as a branch of the legislative department of the Government, has no special interest in these proceedings. It entered upon them with great reluctance, after laborious and continued investigation, and only upon a conviction that the interests of the country were in peril, and that there was no way of relief except through the exercise of the highest constitutional power vested in that body. We do not appeal to this tribunal because any special right of the House of Representatives has been infringed, or because the just powers of or the existence of the House are in danger, except as that body must always participate in the good or ill fortune of the country. They have brought this respondent to your bar, and here demand his conviction in the belief, as the result of much investigation, of much deliberation, that the interests of this country are no longer safe in his hands.

But the House of Representatives, representing the people of the country, may very properly appeal to this tribunal, constituted, as it is, exclusively of Senators representing the different States of this Union, to maintain the constitutional powers of the Senate. To be sure, nothing can injuriously affect the powers and the rights of the Senate which does not affect injuriously the rights of the House of Representatives, and of the people of the whole country; but it may be said with great truth that this contest is first for the preservation of the constitutional powers of this branch of the Government. By your votes and action, in concurrence with the House of Representatives, the bill "regulating the tenure of certain civil offices" was passed and became a law, and this notwithstanding the objections of the President thereto and his argument against its passage. On a subsequent occasion, when you considered the suspension of Mr. Stanton and the message of the President, in which, by argument and by statements, he assailed the law in question, you asserted its validity and its constitutionality by refusing to concur in the suspension of Mr. Stanton. On a more recent occasion, when he attempted to remove Mr. Stanton from office, you, by solemn resolution, declared that his action therein was contrary to the laws and to the Constitution of the country.

From the beginning of the Government this body has participated under the Constitution and by virtue of the Constitution in all matters pertaining to appointments to office; and, by the universal practice of the country, as well before the passage of the tenure-of-office act as since, no removal of any officer whose appointment was by and with the advice and consent of the Senate, has been made during a session of the Senate, with your knowledge and sanction, except by the nomination of a successor, whose nomination was confirmed by and with the advice and consent of the Senate. Mr. Johnson, in presence of this uniform constitutional practice of three quarters of a century and against the express provisions of the tenure-of-office act, made in this particular in entire harmony with that practice, asserts now, absolutely, the unqualified power to remove every officer in the country without the advice or consent of the Senate.

Never in the history of any free government has there been so base, so gross, so unjustifiable an attempt upon the part of an executive, whether emperor, king, or President, to destroy the just authority of another department of the Government.

The House of Representatives has not been indifferent to this assault; it has not been unmindful of the danger to which you have been exposed; it has seen, what you must admit, that without its agency and support you were powerless to resist these aggressions, or to thwart, in any degree, the purposes of this usurper. In the exercise of their constitutional power of impeachment they have brought him to your bar; they have laid before you the evidence showing conclusively the nature, the extent, and the depth of his guilt. You hold this great power in trust, not for yourselves merely, but for all your successors in these high places, and for all the people of this country. You cannot fail to discharge your duty; that duty is clear. On the one hand it is your duty to protect, to preserve, and to defend your own constitutional rights, but it is equally your duty to preserve the laws and institutions of the country. It is your duty to protect and defend the Constitution of the United States, and the rights of the people under it; it is your duty to preserve and to transmit unimpaired to your successors in these places all the constitutional rights and privileges guarantied to this body by the form of government under which we live. On the other hand, it is your duty to try and convict the accused, if guilty, and to pronounce judgment upon the respondent, that all his successors, and all men who aspire to the office of President in time to come, may understand that the House of Representatives and the Senate will demand the strictest observance of the Constitution; that they will hold every man in the presidential office responsible for a rigid performance of his public duties.

Nothing, literally nothing, can be said in defense of this respondent. Upon his own admissions he is guilty, in substance, of the

gravest charges contained in the articles of impeachment exhibited against him by the House of Representatives. In his personal conduct and character he presents no quality or attribute which enlists the sympathy or the regard of men. The exhibition which he made in this Chamber on the 4th of March, 1865, by which the nation was humiliated and republican institutions disgraced, in the presence of the representatives of the civilized nations of the earth, is a truthful exhibition of his character. His violent, denunciatory, blasphemous declarations made to the people on various occasions, and proved by the testimony submitted to the Senate, illustrate other qualities of his nature. His cold indifference to the desolation, disorder, and crimes in the ten States of the South exhibit yet other and darker features.

Can any one entertain the opinion that Mr. Johnson is not guilty of such crimes as justify his removal from office and his disqualification to hold any office of trust or profit under the Government of the United States? William Blount, Senator of the United States, was impeached by the House of Representatives and declared guilty of a high misdemeanor, and though not tried by the Senate the Senate did, nevertheless, expel him from his seat by a vote of 25 to 1, and, in the resolution of expulsion, declared that he had been guilty of a high misdemeanor. The crime of William Blount was that he wrote a letter and participated in conversations, from which it appeared probable that he was engaged in an immature scheme to alienate the Indians of the Southwest from the President and the Congress of the United States; and also, incidentally, to disturb the friendly relations between this Government and the Governments of Spain and Great Britain. This, at most, was but an arrangement, never consummated into any overt act, by which he contemplated, under possible circumstances which never occurred, that he would violate the neutrality laws of the United States.

Andrew Johnson is guilty, upon the proof in part and upon his own admissions, of having intentionally violated a public law, of usurping and exercising powers not exercised nor even asserted by any of his predecessors in office.

Judge Pickering, of the district court of New Hampshire, was impeached by the House of Representatives, convicted by the Senate, and removed from office, for the crime of having appeared upon the bench in a state of intoxication. I need not draw any parallel between Judge Pickering and this respondent.

Judge Prescott, of Massachusetts, was impeached and removed from office for receiving illegal fees in his office to the amount of $10 70 only. Judge Prescott belonged to one of the oldest and most eminent families of the State, and he was himself a distinguished lawyer. But such was the respect of the Senate of that sate for the law, and such the public opinion that it was the duty of magistrates to obey the law, that they did not hesitate to convict him and remove him from office.

The Earl of Macclesfield was impeached and convicted for the misuse of his official powers in regard to trust funds, an offense in itself of a grave character, but a trivial crime compared with the open, wanton, and defiant violation of law by a Chief Magistrate whose highest duty is the execution of the laws.

If the charges preferred against Warren Hastings had been fully sustained by the testimony, he would be regarded in history as an unimportant criminal when compared with the respondent. Warren Hastings, as governor general of Bengal, extended the territory of the British empire, and brought millions of the natives of India under British rule. If he exercised power in India for which there was no authority in British laws or British customs—if in the exercise of that power he acquired wealth for himself or permitted others to accumulate fortunes by outrages and wrongs perpetrated upon that distant people, he still acted in his public policy in the interest of the British empire and in harmony with the ideas and purposes of the British people.

Andrew Johnson has disregarded and violated the laws and Constitution of his own country. Under his administration the Government has not been strengthened, but weakened. Its reputation and influence at home and abroad have been injured and diminished. He has not outraged a distant people bound to us by no ties, but those which result from conquest and the exercise of arbitrary power on our part; but through his violation of the laws and the influence of his evil example upon the men of the South, in whose hearts the purposes and the passions of the war yet linger, he has brought disorder, confusion, and bloodshed to the homes of twelve millions of people, many of whom are of our own blood and all of whom are our countrymen. Ten States of this Union are without law, without security, without safety; public order everywhere violated, public justice nowhere respected; and all in consequence of the evil purposes and machinations of the President. Forty millions of people have been rendered anxious and uncertain as to the preservation of public peace and the perpetuity of the institutions of freedom in this country.

There are no limits to the consequences of this man's evil example. A member of his Cabinet in your presence avows, proclaims, indeed, that he suspended from office indefinitely a faithful public officer who was appointed by your advice and consent; an act which he does not attempt to justify by any law or usage, except what he is pleased to call the law of necessity. Is it strange that in the presence of these examples the ignorant, the vicious, and the criminal are everywhere swift to violate the laws? Is it strange that the loyal people of the South, most of them

poor, dependent, not yet confident of their newly-acquired rights, exercising their just privileges in fear and trembling, should thus be made the victims of the worst passions of men who have freed themselves from all the restraints of civil government? Under the influence of these examples good men in the South have everything to fear, and bad men have everything to hope.

Caius Verres is the great political criminal of history. For two years he was prætor and the scourge of Sicily. The area of that country does not much exceed ten thousand square miles, and in modern times it has had a population of about two million souls. The respondent at your bar has been the scourge of a country many times the area of Sicily and containing a population six times as great. Verres enriched himself and his friends; he seized the public paintings and statues and carried them to Rome. But at the end of his brief rule of two years he left Sicily as he had found it; in comparative peace, and in the possession of its industries and its laws. This respondent has not ravaged States nor enriched himself by the plunder of their treasures; but he has inaugurated and adhered to a policy which has deprived the people of the blessings of peace, of the protection of law, of the just rewards of honest industry. A vast and important portion of the Republic, a portion whose prosperity is essential to the prosperity of the country at large, is prostrate and helpless under the evils which his Administration has brought upon it. When Verres was arraigned before his judges at Rome, and the exposure of his crimes began, his counsel abandoned his cause and the criminal fled from the city. Yet Verres had friends in Sicily, and they erected a gilded statue to his name in the streets of Syracuse. This respondent will look in vain, even in the South, for any testimonials to his virtues or to his public conduct. All classes are oppressed by the private and public calamities which he has brought upon them. They appeal to you for relief. The nation waits in anxiety for the conclusion of these proceedings. Forty millions of people, whose interest in public affairs is in the wise and just administration of the laws, look to this tribunal as a sure defense against the encroachments of a criminally-minded Chief Magistrate.

Will any one say that the heaviest judgment which you can render is any adequate punishment for these crimes? Your office is not punishment, but to secure the safety of the Republic. But human tribunals are inadequate to punish those criminals who, as rulers or magistrates, by their example, conduct, policy, and crimes, become the scourge of communities and nations. No picture, no power of the imagination can illustrate or conceive the suffering of the poor but loyal people of the South. A patriotic, virtuous, law-abiding Chief Magistrate would have healed the wounds of war, soothed private and public sorrows, protected the weak, encouraged the strong, and lifted from the southern people the burdens which now are greater than they can bear.

Travelers and astronomers inform us that in the southern heavens, near the Southern Cross, there is a vast space which the uneducated call the hole in the sky, where the eye of man with the aid of the powers of the telescope has been unable to discover nebulæ, or asteroid, or comet, or planet, or star, or sun. In that dreary, cold, dark region of space, which is only known to be less than infinite by the evidences of creation elsewhere, the Great Author of celestial mechanism has left the chaos which was in the beginning. If this earth were capable of the sentiments and emotions of justice and virtue, which in human mortal beings are the evidences and the pledge of our divine origin and immortal destiny, it would heave and throe, with the energy of the elemental forces of nature, and project this enemy of two races of men into that vast region, there forever to exist in a solitude eternal as life, or as the absence of life, emblematical of, if not really, that "outer darkness" of which the Saviour of man spoke in warning to those who are the enemies of themselves, of their race, and of their God. But it is yours to relieve, not to punish. This done and our country is again advanced in the intelligent opinion of mankind. In other Governments an unfaithful ruler can be removed only by revolution, violence, or force. The proceeding here is judicial, and according to the forms of law. Your judgment will be enforced without the aid of a policeman or a soldier. What other evidence will be needed of the value of republican institutions? What other test of the strength and vigor of our Government? What other assurance that the virtue of the people is equal to any emergency of national life?

The contest which the House of Representatives carries on at your bar is a contest in defense of the constitutional rights of the Congress of the United States, representing the people of the United States against the arbitrary, unjust, illegal claims of the Executive.

This is the old contest of Europe revived in America. England, France, and Spain have each been the theater of this strife. In France and Spain the executive triumphed. In England the people were victorious. The people of France gradually but slowly regain their rights. But even yet there is no freedom of the press in France; there is no freedom of the legislative will; the emperor is supreme.

Spain is wholly unregenerated. England alone has a free Parliament and a government of laws emanating from the enfranchised people. These laws are everywhere executed, and a sovereign who should willfully interpose any obstacle would be dethroned without delay. In England the law is more mighty than the king. In America a President claims to be mightier than the law.

This result in England was reached by slow movements, and after a struggle which lasted through many centuries. John Hampden was not the first nor the last of the patriots who resisted executive usurpation, but nothing could have been more inapplicable to the present circumstances than the introduction of his name as an apology for the usurpations of Andrew Johnson.

"No man will question John Hampden's patriotism or the propriety of his acts when he brought the question whether ship-money was within the constitution of England before the courts;" but no man will admit that there is any parallel between Andrew Johnson and John Hampden. Andrew Johnson takes the place of Charles I, and seeks to substitute his own will for the laws of the land. In 1636 John Hampden resisted the demands of an usurping and unprincipled king, as does Edwin M. Stanton to-day resist the claims and demands of an unprincipled and usurping President.

The people of England have successfully resisted executive encroachments upon their rights. Let not their example be lost upon us. We suppressed the rebellion in arms, and we are now to expel it from the executive councils. This done, republican institutions need no further illustration or defense. All things then relating to the national welfare and life are made as secure as can be any future events.

The freedom, prosperity, and power of America are established. The friends of constitutional liberty throughout Europe will hail with joy the assured greatness and glory of the new Republic. Our internal difficulties will rapidly disappear. Peace and prosperity will return to every portion of the country. In a few weeks or months we shall celebrate a restored Union upon the basis of the equal rights of the States, in each of which equality of the people will be recognized and established. This respondent is not to be convicted that these things may come, but justice being done, these things are to come.

At your bar the House of Representatives demand justice—justice for the people, justice to the accused. Justice is of God, and it cannot perish. By and through justice comes obedience to the law by all magistrates and people. By and through justice comes the liberty of the law, which is freedom without license.

Senators, as far as I am concerned, the case is now in your hands, and it is soon to be closed by my associate. The House of Representatives have presented this criminal at your bar with equal confidence in his guilt and in your disposition to administer exact justice between him and the people of the United States.

His conviction is the triumph of law, of order, of justice. I do not contemplate his acquittal—it is impossible. Therefore I do not look beyond. But, Senators, the people of America will never permit an usurping Executive to break down the securities for liberty provided by the Constitution. The cause of the Republic is in your hands. Your verdict of *guilty* is *peace* to our beloved country.